

FEDERAL REGISTER

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Washington, Wednesday, February 3, 1954

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

DEPARTMENT OF STATE

Effective upon publication in the FEDERAL REGISTER, paragraphs (c) and (q) of § 6.302 are amended by the addition of the positions listed below.

§ 6.302 *Department of State.* . . .

(c) *Office of the Assistant Secretary for Congressional Relations.* . . .

(6) One Executive Assistant.

(7) Three Legislative Management Officers.

(q) *Office of the Assistant Secretary for Administration.* . . .

(2) One Private Secretary to the Assistant Secretary.

(3) One Private Secretary to the Deputy Assistant Secretary.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633. E. O. 10440, Mar. 31, 1953, 18 F. R. 1823)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] Wm. C. HULL,
Executive Assistant.

[F. R. Doc. 54-731; Filed, Feb. 2, 1954; 8:53 a. m.]

TITLE 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Docket No. AO226-A3]

PART 925—MILK IN THE PUGET SOUND, WASHINGTON, MILK MARKETING AREA

ORDER AMENDING THE ORDER, AS AMENDED

§ 925.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order, and of the previously issued amendments thereto and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Puget Sound, Washington, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order, as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is hereby found and determined that good cause exists for making this amendatory order effective February 1, 1954. Such action is necessary in the public interest in order to reflect current marketing conditions and to insure the orderly marketing of available milk supplies. Accordingly, any further delay in the effective date of this order amending the order, as amended, will seriously impair the orderly marketing of milk in the Puget Sound, Washington, marketing area. The provisions of the said amendatory order are well known to handlers and producers the public hearing having been held on August 10-11, 1953 and a

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FEDERAL REGISTER

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final decision on the amendment provisions having been issued January 22, 1954. Reasonable time under the circumstances has been afforded persons affected to prepare for its effective date. Therefore, it would be contrary to the public interest to delay the effective date of this amendatory order for 30 days after its publication in the *FEDERAL REGISTER*. (See sec. 4 (c) Administrative Procedure Act, Pub. Law 404, 79th Cong., 60 Stat. 237).

(c) *Determinations.* It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping milk covered by this order amending the order) of more than 50 percent of the volume of the milk covered by this order amending the order, as amended, which is marketed within the said marketing area, refused or failed to sign the proposed marketing agreement regulating the handling of milk in the said marketing area and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign said marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of this order amending the order, as amended, is the only practical means pursuant to the policy of the act, of advancing the interests of the producers of milk which is produced for sale in the said marketing area; and

(3) The issuance of this order amending the order, as amended, is approved or favored by at least two-thirds of the producers who participated in a referendum on the question of approval of its issuance, and who during the determined representative period (October 1953) were engaged in the production of milk for sale in the said marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof the handling of milk in the Puget Sound, Washington, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended as follows:

1. Delete § 925.14 and substitute therefor the following:

§ 925.14 *Other source milk.* "Other source milk" means (a) all skim milk and butterfat received from a producer-handler (or the plant of a producer-handler) in any form (including bottled products), and (b) all other skim milk and butterfat other than in (1) producer milk, and (2) milk and milk prod-

ucts in any of the forms specified in § 925.41 (a) (1) received from fluid milk plants and country plants.

2. Delete § 925.18 and substitute therefor the following:

§ 925.18 *Base milk.* "Base milk" means milk delivered by a producer during the month which is not in excess of (a) his daily base computed pursuant to § 925.60 (a) multiplied by the number of days of delivery in such month, or (b) his base computed pursuant to § 925.60 (b): *Provided*, That with respect to any producer on "every-other-day" delivery to a fluid milk plant or country plant, the days of non-delivery shall be considered as days of delivery for the purposes of this section and of § 925.60 (a).

3. Delete the language of § 925.30 preceding paragraph (a) of such section and substitute therefor the following:

§ 925.30 *Monthly reports of receipts and utilization.* On or before the 8th day of each month and in the detail and on forms prescribed by the market administrator, each person who is a handler pursuant to § 925.15 (a), except a producer-handler, shall submit to the market administrator a separate report for each of such handler's fluid milk plants, country plants, and plants where milk or milk products subject to payments required under § 925.70 (b) were handled, and each cooperative association which is a handler pursuant to § 925.15 (b) shall submit to the market administrator a report with respect to milk diverted on its account, containing the following information for the preceding month.

3a. Add the following as § 925.44 (a) (5):

(5) Notwithstanding the prior provisions of this paragraph any such skim milk and butterfat caused to be moved in bulk by a handler during any month from any fluid milk plant or country plant either by transfer or without being received therein to a fluid milk plant in which facilities are maintained and used during the same month to receive milk or milk products required by applicable health authority regulations to be kept physically separate from milk qualified as described in § 925.12 shall be deemed to have been transferred by such handler to a country plant and shall be classified in accordance with the provisions of paragraph (b) of this section.

4. Delete § 925.44 (a) (4) and substitute therefor the following:

(4) If at a fluid milk plant any receipts of skim milk or butterfat from any fluid milk plant(s) or country plant(s) located in District No. 1 or in the counties of Kitsap or Mason are assigned to Class II milk, they shall be allocated to the uses stated in § 925.54 (a) insofar as such uses are available at the transferee plant after allocating to such uses the other source milk at such plant; and

4a. Delete § 925.44 (b) (1) and substitute therefor the following:

(1) The skim milk or butterfat so assigned to Class II milk shall be limited

to the amount thereof remaining in Class II milk in the transferee plant after the subtraction pursuant to § 925.45 (b) (2) of other source milk at such plant and after the subtraction of producer shrinkage classified as Class II milk pursuant to § 925.41 (b) (4), and any additional amounts of such skim milk or butterfat shall be assigned to Class I milk;

5. Delete § 925.44 (b) (4) and substitute therefor the following:

(4) If at a country plant any receipts of skim milk or butterfat from any fluid milk plant(s) or country plant(s) located in District No. 1 or in the counties of Kitsap and Mason are assigned to Class II milk, they shall be allocated to the uses stated in § 925.54 (a) insofar as such uses are available at the transferee plant after allocating to such uses the other source milk at such plant; and

5a. Add the following as § 925.44 (b) (5):

(5) Notwithstanding the prior provisions of this paragraph, any such skim milk and butterfat caused to be moved in bulk by a handler during any month from any fluid milk plant or country plant without being received therein to a country plant in which facilities are maintained and used during the same month to receive milk or milk products required by applicable health authority regulations to be kept physically separate from milk qualified as described in § 925.12 shall be deemed to have been transferred by such handler to a country plant and shall be classified in accordance with the provisions of this paragraph.

5b. Delete § 925.44 (c) (2) and substitute therefor the following:

(2) As Class II milk if the transfer is to a nonpool plant located in the marketing area or within any of the counties of Clallam, Jefferson, Grays Harbor, Island, Kitsap and Mason, in the State of Washington, which is not engaged in the distribution of milk for consumption in fluid form: *Provided*, That if such nonpool plant disposes of skim milk or butterfat in any of the forms specified in § 925.41 (a) (1) to any other nonpool plant distributing milk in fluid form which is not located in the marketing area, such disposition up to the quantity of producer milk transferred to the first nonpool plant shall be classified as Class I milk: *Provided further*, That if the preceding proviso does not apply the transferred quantity shall be allocated to uses other than those covered by § 925.54 (a) (1) to the extent that such other Class II milk uses are available at such nonpool plant: *And provided also*, That if the market administrator is not permitted to audit the records of such nonpool plant for the purpose of use verification, the entire transfer shall be classified as Class I milk.

6. Delete § 925.45 (a) and substitute therefor the following:

(a) Correct for mathematical and for other obvious errors the monthly report submitted by such handler and compute the total pounds of skim milk and butterfat in each class: *Provided*, That when

nonfat milk solids derived from nonfat dry milk solids, condensed skim milk, or any other product condensed from skim milk, are utilized by such handler either (1) to fortify (or as an additive to) fluid milk, flavored milk, skim milk or any other milk product, or (2) for disposition in reconstituted form as skim milk or a milk drink, the total pounds of skim milk computed for the appropriate class of use shall reflect a volume equivalent to the skim milk used to produce such nonfat milk solids.

7. Delete in § 925.52 (a) the figure "1.25" and substitute therefor the figure "1.2."

8. Delete § 925.54 (a) and substitute therefor the following:

(a) Compute the sum (in pounds) of:
(1) The total utilization at such plant (including any disposition of skim milk and butterfat from such plant for similar uses at nonpool plants) of skim milk and butterfat, respectively, in evaporated milk in hermetically sealed cans, butter, nonfat dry milk solids, powdered whole milk, all cheeses except "baker's," "pot," cottage (including that creamed), cream and neufchatel, and shrinkage allowable as Class II milk pursuant to § 925.41 (b) (4) and (5), and (2) the total quantity of skim milk and butterfat transferred to other fluid milk plants and country plants located in District No. 1 or in the counties of Kitsap and Mason and allocated to the uses specified in subparagraph (1) of this paragraph (as provided in § 925.44 (a) (4) and (b) (4));

9. Delete § 925.60 (a) and (b) and substitute therefor the following:

(a) The daily base of each producer whose milk was received by a handler(s) on not less than one hundred twenty (120) days during the months of August through December, inclusive, shall be an amount computed by dividing such producer's total pounds of milk delivered in such five-month period by the number of days from the date of his first delivery to the end of such five-month period. The base so computed, which shall be recomputed each year, shall become effective on the first day of February next following and shall remain in effect through the month of January of the next succeeding year.

(b) Any producer who is not eligible to receive a base computed pursuant to paragraph (a) of this section, shall have, beginning with February 1954, a monthly base computed by multiplying his deliveries to a handler(s) during the month by the appropriate monthly percentage in the following table:

January	75	July	55
February	70	August	65
March	65	September	75
April	55	October	75
May	45	November	80
June	50	December	80

10. Delete § 925.61 and substitute therefor the following:

§ 925.61 *Base rules.* The following rules shall be observed in determination of bases:

(a) A base may be transferred upon written notice to the market administrator on or before the last day of the

month of transfer, but under the following circumstances only: If a producer sells, leases, or otherwise conveys his herd to another producer, the latter may receive the transferor's base, unless earned under § 925.60 (b), pursuant to the conveyance and utilize such base until February 1 next following the date of conveyance, subject to the following conditions:

(1) Such base shall apply to deliveries of milk by the transferee producer from the same farm only;

(2) If such conveyance takes place subsequent to August 1 of any year, all milk delivered to a handler(s) between August 1 and December 31, inclusive, from the same farm (whether by the transferor or transferee producer) shall be utilized, pursuant to § 925.60 (a), in computing the base of the transferee producer to become effective the next February 1; and

(3) It is established to the satisfaction of the market administrator that the conveyance of the herd was bona-fide and not for the purpose of evading any provision of this subpart.

(b) A producer who ceases deliveries to a fluid milk plant or country plant for more than 45 days shall lose his base if computed pursuant to § 925.60 (a) and if he resumes deliveries to such a plant he shall be paid on a base determined pursuant to § 925.60 (b) until he can establish a new base under § 925.60 (a) to begin the next February 1.

(c) By notifying the market administrator in writing on or before the 15th day of any month, a producer holding a base established pursuant to § 925.60 (a) may relinquish such base by cancellation, and effective from the first day of the month in which notice is received by the market administrator until the next February 1 such producer's base shall be computed in the manner provided by § 925.60 (b).

(d) As soon as bases computed by the market administrator are allotted, notice of the amount of each producer's base shall be given by the market administrator to the handler receiving such producer's milk and to the cooperative association of which the producer is a member. Each handler, following receipt of such notice, shall promptly post in a conspicuous place at each of his plants a list or lists showing the base of each producer whose milk is received at such plant.

(e) If a producer operates more than one farm he shall establish a separate base with respect to producer milk delivered from each such farm.

(f) Only producers as defined in § 925.12 may establish or earn a base pursuant to the provisions of § 925.60, and only one base shall be allotted with respect to milk produced by one or more persons where the land, buildings, and equipment used are jointly owned or operated.

11. Delete that portion of § 925.70 (a) prior to subparagraph (1) of such paragraph and substitute therefor the following:

(a) Except as provided in paragraph (b) of this section, the total value of milk received during any month at each

plant by each handler, including a cooperative association, shall be a sum of money computed by the market administrator as follows:

12. Delete § 925.70 (a) (6) and (b) and substitute therefor the following:

(6) Add, with respect to other source milk (including overage allocated to other source milk) received at each fluid milk plant and country plant of such handler in excess of the total volume of his Class II milk (except allowable shrinkage) at such plant, an amount computed by multiplying the hundredweight of such other source milk by the difference between the Class I milk and Class II milk prices adjusted, respectively, by the butterfat differentials provided in § 925.52 (based on the butterfat test of such other source milk), and in the case of a fluid milk plant or country plant not located in District No. 1, or in the counties of Kitsap or Mason, such difference shall be reduced as follows: 50 cents at any such plant located in Clallam County or Jefferson County; and 40 cents at any other plant not located in District No. 1 or in the counties of Kitsap or Mason.

(b) The value of milk of each handler at any plant where only other source milk was received and from which, during the month, some other source milk was disposed of within the marketing area as Class I milk pursuant to § 925.41 (a) (1) shall be a sum of money computed by the market administrator by multiplying the hundredweight of such other source milk so disposed of by the difference between the Class I milk and Class II milk prices adjusted, respectively, by the butterfat differentials provided in § 925.52 (based on the butterfat test of such other source milk), and, in the event disposition within the marketing area was only within Districts Nos. 2 or 3, such difference shall be reduced by 40 cents per hundredweight.

13. Delete § 925.80 (b) and substitute therefor the following:

(b) On or before the 17th day after the end of each month each handler shall pay to each cooperative association which operates a fluid milk plant or country plant, for skim milk and butterfat received from such cooperative association during such month, an amount of money computed by multiplying the total pounds of such skim milk and butterfat in each class (pursuant to § 925.41) by the class price taking into account any location adjustment, as provided by §§ 925.53 and 925.54, applicable at the plant at which payment for such skim milk and butterfat is required under the provisions of § 925.70.

14. Delete § 925.81 (b) and substitute therefor the following:

(b) 25 cents per hundredweight shall be added to the uniform price for excess milk received from producers at plants located in District No. 1 or in the counties of Kitsap and Mason.

15. Delete § 925.87 (a) and substitute therefor the following:

(a) Except as set forth in paragraph (b) of this section, each handler, in mak-

ing payments to producers (other than with respect to milk of such handler's own production) pursuant to § 925.80 (a), shall make a deduction of 5 cents per hundredweight of milk, or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, with respect to the following:

(1) All milk received from producers at a plant not operated by a cooperative association;

(2) All milk received at a plant operated by a cooperative association from producers who are not members of such association; and

(3) All milk received at a plant operated by a cooperative association(s) from producers who are members thereof but for whom any of the services set forth below in this paragraph is not being performed by such association(s), as determined by the market administrator.

Such deduction shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for the verification of weights, sampling, and testing of milk received from producers and in providing for market information to producers; such services to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Issued at Washington, D. C., this 29th day of January 1954, to be effective on and after the 1st day of February 1954.

[SEAL] JOHN H. DAVIS,
Assistant Secretary of Agriculture.

[F. R. Doc. 54-735; Filed, Feb. 2, 1954;
8:54 a. m.]

PART 941—MILK IN THE CHICAGO, ILLINOIS, MARKETING AREA

ORDER SUSPENDING CERTAIN PROVISION

Pursuant to the applicable provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 1940 et seq.), hereinafter referred to as the "act", and of the order, as amended regulating the handling of milk in the Chicago, Illinois, marketing area, hereinafter referred to as the "order" it is hereby found and determined that:

For the month of February 1954, the provision "and subtract therefrom the amount of Class II milk represented by frozen cream and plastic cream moving into storage during such 12-month period" in § 941.51 (b), does not tend to effectuate the declared policy of the act.

It is hereby found and determined that notice of proposed rule making and public procedure thereon in connection with the issuance hereof is impracticable, unnecessary and contrary to the public interest, in that (1) the information upon which this action is based did not become available in sufficient time for such compliance; (2) the issuance of this suspension order effective as set forth

below is necessary to reflect current marketing conditions and to facilitate, promote and maintain the orderly marketing of milk produced for the said marketing area; and (3) this suspension action is necessary to avoid a level of the uniform price in certain parts of the milkshed below the Class IV price. The changes caused by this suspension order do not require of persons affected substantial or extensive preparation prior to its effective date.

Therefore, good cause exists for making this order effective immediately.

It is therefore ordered, That the following provision of the order is hereby suspended for the month of February 1954:

In § 941.51 (b) the provision "and subtract therefrom the amount of Class II milk represented by frozen cream and plastic cream moving into storage during such 12-month period".

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Done at Washington, D. C., this 29th day of January 1954, to be effective February 1, 1954.

[SEAL] JOHN H. DAVIS,
Assistant Secretary of Agriculture.

[F. R. Doc. 54-733; Filed, Feb. 2, 1954;
8:53 a. m.]

PART 949—MILK IN THE SAN ANTONIO, TEXAS, MARKETING AREA

ORDER AMENDING ORDER, AS AMENDED

§ 949.0 Findings and determinations. The findings and determinations herein-after set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the San Antonio, Texas, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as amended and as hereby further amended, and all of the terms and conditions of said order as amended and as hereby further amended, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk produced for sale in the said marketing area as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds

and other economic conditions which affect market supply of and demand for such milk, and the minimum prices specified in the order, as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

(b) Additional findings. It is necessary, in the public interest, to make this order amending the order, as amended, effective at the earliest possible date. Any delay in the effective date of this order would result in disorder in the marketing of milk. Because of the excessive disparity in the Class I prices as between the North Texas and San Antonio marketing areas, milk from the North Texas market threatens to displace producer milk in San Antonio. Provision must be made therefore, at the earliest possible time, for limiting the difference between the Class I price to 50 cents per hundredweight which approximates the transportation costs between the markets. Most handlers in the San Antonio, Texas, market are unable to process milk in excess of that required to carry on their fluid milk operations. Unless provision is made for lower prices on milk that must be transferred to outlets for manufacture into cheddar cheese, handlers may refuse to accept substantial quantities from producers as production increases seasonally. The producers' cooperative association has no facilities for handling milk. In order to provide an outlet for this milk and stabilize the market, it is necessary to make this amendment effective at once.

Since this order reduces prices handlers are required to pay for milk disposed of for use in cheddar cheese, it tends to relieve restrictions imposed upon handlers with respect to such milk. Thus, changes effected by this order should not require extensive preparation or substantial alteration in method of operation for handlers. It is hereby found, therefore, that good cause exists for making this order effective February 1, 1954. (Sec. 4 (c); Administrative Procedure Act, 5 U. S. C. 1001 et seq.).

(c) Determinations. It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing or shipping milk covered by this order, amending the order, as amended, which is marketed within the San Antonio, Texas marketing area) of more than 50 percent of the milk which is marketed within the said marketing area, refused or failed to sign the proposed marketing agreement regulating the handling of milk in the said marketing area, and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign said proposed marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of the order amending the order, as amended, is the only practical means, pursuant to the declared policy of the act, of advancing the interests of producers of milk which is produced for sale in the said marketing area; and

(3) The issuance of this order amending the order, as amended, is approved or favored by at least two-thirds of the producers who, during the determined representative period (December 1953), were engaged in the production of milk for sale in the said marketing area.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the San Antonio, Texas, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended effective February 1, 1954, and as hereby further amended, as follows:

1. Amend § 949.51 (b) to read as follows:

(b) Adjust the price calculated pursuant to paragraph (a) of this section so that it does not exceed the price calculated pursuant to paragraph (e) of this section by less than \$2.00 for each month or more than \$2.50 for each of the months of April, May, and June and \$2.70 for each of the other months.

2. Delete § 949.51 (c).

3. Amend § 949.51 (d) by adding thereto the following: "The provisions of this paragraph shall operate only to the extent that the difference between the Class I price pursuant to the order, as amended, regulating the handling of milk in the North Texas marketing area (Part 943 of this chapter) and the Class I price pursuant to this section shall not be greater than \$0.50."

4. Amend § 949.53 by inserting immediately preceding paragraph (a) thereof the following proviso: "Provided, That from the effective date of this proviso through July 1954 the price for Class II milk disposed of for use in cheese other than cottage cheese shall be the simple average of the prices paid dairy farmers for milk containing 4 percent of butterfat delivered during the month for which prices are being computed to cheese plants located at Alice and Round Rock, Texas, and operated by the Fort Worth Poultry and Egg Company."

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Issued at Washington, D. C., this 29th day of January 1954, to be effective on and after February 1, 1954.

[SEAL] JOHN H. DAVIS,
Assistant Secretary of Agriculture.

[P. R. Doc. 54-736; Filed, Feb. 2, 1954; 8:54 a. m.]

PART 967—MILK IN THE SOUTH BEND-LA PORTE, INDIANA, MARKETING AREA

ORDER SUSPENDING CERTAIN PROVISION

Pursuant to the applicable provisions of Public Act No. 10, 73d Congress, as

amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 1940 ed. 601 et seq.), hereinafter referred to as the "act", and of the order, as amended, regulating the handling of milk in the South Bend-LaPorte, Indiana, marketing area, hereinafter referred to as the "order", it is hereby found and determined that:

For the month of February 1954, the provision "and subtract therefrom the amount of Class II milk represented by frozen cream and plastic cream moving into storage during such 12-month period" in § 967.51 (d) (2), does not tend to effectuate the declared policy of the act.

It is hereby found and determined that notice of proposed rule making and public procedure thereon in connection with the issuance hereof is impractical, unnecessary and contrary to the public interest, in that (1) the information upon which this action is based did not become available in sufficient time for such compliance; (2) the issuance of this suspension order effective as set forth below is necessary to reflect current marketing conditions and to facilitate, promote and maintain the orderly marketing of milk produced for said marketing area, and (3) this suspension is necessary in connection with a similar suspension order affecting the order regulating the handling of milk in the Chicago, Illinois, marketing area, so as to preserve existing price relationships in the two markets.

The changes caused by this suspension order do not require of persons affected substantial or extensive preparation prior to its effective date.

Therefore, good cause exists for making this order effective immediately.

It is therefore ordered, That the following provision of the order is hereby suspended for the month of February 1954:

In § 967.51 (d) (2) the provision "and subtract therefrom the amount of Class II milk represented by frozen cream and plastic cream moving into storage during such 12-month period".

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Done at Washington, D. C., this 29th day of January 1954 to be effective February 1, 1954.

[SEAL] JOHN H. DAVIS,
Assistant Secretary of Agriculture.

[P. R. Doc. 54-737; Filed, Feb. 2, 1954; 8:55 a. m.]

PART 982—MILK IN THE CENTRAL WEST TEXAS MARKETING AREA

ORDER AMENDING ORDER, AS AMENDED

§ 982.0 Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order;

and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agriculture Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Central West Texas marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as amended and as hereby further amended, and all of the terms and conditions of said order as amended and as hereby further amended, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk produced for sale in the said marketing area as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply of and demand for such milk, and the minimum prices specified in the order, as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

(b) Additional findings. It is necessary, in the public interest, to make this order amending the order, as amended, effective at the earliest possible date. Any delay in the effective date of this order would result in disorder in the marketing of milk. Most handlers in the Central West Texas market are unable to process milk in excess of that required to carry on their fluid milk operations. Unless provision is made for lower prices on milk that must be transferred to outlets for manufacture into cheddar cheese, handlers may refuse to accept substantial quantities from producers as production increases seasonally. The producers' cooperative association has no facilities for handling milk. In order to provide an outlet for this milk and stabilize the market, it is necessary to make this amendment effective at once.

Since this order reduces prices handlers are required to pay for milk disposed of for use in cheddar cheese, it tends to relieve restrictions imposed upon handlers with respect to such milk.

Thus, changes effected by this order should not require extensive preparation or substantial alteration in method of operation for handlers. It is hereby found, therefore, that good cause exists for making this order effective February 1, 1954. (Sec. 4 (c); Administrative Procedure Act, 5 U. S. C. 1001 et seq.)

(c) *Determinations.* It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing or shipping milk covered by this order, amending the order, as amended, which is marketed within the Central West Texas marketing area of more than 50 percent of the milk which is marketed within the said marketing area, refused or failed to sign the proposed marketing agreement regulating the handling of milk in the said marketing area, and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign said proposed marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of the order amending the order, as amended, is the only practical means, pursuant to the declared policy of the act, of advancing the interests of producers of milk which is produced for sale in the said marketing area; and

(3) The issuance of this order amending the order, as amended, is approved or favored by at least two-thirds of the producers who, during the determined representative period (December 1953), were engaged in the production of milk for sale in the said marketing area.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Central West Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. Amend § 822.51 by inserting immediately preceding paragraph (a) thereof the following: "Provided, That from the effective date of this proviso through July 1954, the minimum price per hundredweight for Class II milk disposed of for use in cheddar cheese shall be computed by multiplying the simple average of the daily prices paid per pound, using the midpoint of any price range as one price, for Wisconsin State Brand Cheddar in cars or truckloads, f. o. b. Wisconsin assembly points, as reported by the Department for the trading days during the month for which prices are being computed, by 8.0."

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Issued at Washington, D. C., this 29th day of January 1954, to be effective on and after February 1, 1954.

[SEAL] JOHN H. DAVIS,
Assistant Secretary of Agriculture.

[F. R. Doc. 54-732; Filed, Feb. 2, 1954; 8:53 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

[Reg. No. SR-385C]

PART 40—SCHEDULED INTERSTATE AIR CARRIER CERTIFICATION AND OPERATION RULES

PART 41—CERTIFICATION AND OPERATION RULES FOR SCHEDULED AIR CARRIER OPERATIONS OUTSIDE THE CONTINENTAL LIMITS OF THE UNITED STATES

PART 42—IRREGULAR AIR CARRIER AND OFF-ROUTE RULES

PART 45—COMMERCIAL OPERATOR CERTIFICATION AND OPERATION RULES

PART 61—SCHEDULED AIR CARRIER RULES

SPECIAL CIVIL AIR REGULATION; DELEGATION OF AUTHORITY TO THE ADMINISTRATOR TO PERMIT AIR CARRIERS UNDER CONTRACT TO THE MILITARY SERVICES TO DEVIATE FROM CERTAIN CIVIL AIR REGULATIONS

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 29th day of January 1954.

Special Civil Air Regulation SR-385B currently delegates to the Administrator authority to permit deviations from certain parts of the Civil Air Regulations to air carriers under contract to the military services. This regulation became effective October 1, 1953, extending until February 1, 1954, the same authority that had been previously granted to the Administrator. The extension granted by SR-385B was for the purpose of permitting a re-evaluation of the problem involved.

On November 5, 1953, a notice of proposed rule making was published in the FEDERAL REGISTER (18 F. R. 6998) in which it was proposed to continue the authority as was previously delegated to the Administrator and to permit such authority also to apply to an emergency necessitating the transportation of persons or supplies for the protection of life or property. The proposed rule, however, also provided for a review by the Board of any deviations that continued in effect for more than 90 days. Some comment received in response to this proposed rule felt that there was at present permanent need for this deviation authority and that the deviations granted should not be subject to review. Other comment indicated that the urgency for this deviation authority necessitated by the Korean airlift has passed and that there was no further need for this regulation. The Department of Defense, however, has stated that there is a continuing need for this deviation authority.

The Board feels that although the demand for the proposed deviation authority is not as great as during the most active periods of the Korean airlift, there is still a need for delegating deviation authority to the Administrator. While this deviation authority is perhaps not as widely used now as previously, it is difficult to predetermine the time at which an emergency may arise for which immediate action becomes necessary.

In such an event, it would then be necessary that the Administrator be able to permit deviations from the Civil Air Regulations without any delay. For these reasons, this regulation continues the deviation authority currently delegated to the Administrator. To allay the fears, however, of those who feel that there is no current need for such authority or that the authority may be abused, this regulation also provides that no deviation authority may continue in effect for more than 90 days unless notice is transmitted to the Board. If this notice is transmitted to the Board, however, the deviation authority may continue for more than the 90-day period unless otherwise changed by the Board. Thus, any prolonged deviation will be reviewed by the Board.

In addition to the foregoing deviation authority, this regulation also delegates to the Administrator authority to grant deviations from the Civil Air Regulations in the event of any emergency or disaster requiring the transportation of persons or supplies. This delegation of authority is considered desirable. In such instances, immediate action may be required which necessitates a deviation from the Civil Air Regulations, it is considered that permission to deviate in such cases can best be handled by the Administrator.

This regulation shall continue in effect for one year, at the end of which time these problems and the effectiveness of the procedures provided in this regulation will be re-examined for the purpose of considering the incorporation of the substance of these rules in the operating parts of the Civil Air Regulations.

Interested persons have been afforded an opportunity to participate in the making of this regulation, and consideration has been given to all relevant matter presented. Since this regulation imposes no additional burden on any person, it may be made effective without prior notice.

In consideration of the foregoing, the Civil Aeronautics Board hereby makes and promulgates the following Special Civil Air Regulation effective February 1, 1954:

1. Contrary provisions of the Civil Air Regulations notwithstanding, the Administrator may, upon application by an air carrier, authorize an air carrier under contract to the military services, or an air carrier furnishing civil aircraft or flight crews to another air carrier for use in operations conducted pursuant to a contract with the military services, or an air carrier proposing to conduct operations under conditions of an emergency necessitating the transportation of persons or supplies for the protection of life or property, to deviate from the applicable provisions of Parts 40 (including revised Part 40), 41, 42, 45, and 61 to the extent that he finds upon investigation a deviation from those regulations is necessary for the expeditious conduct of such operations.

2. Any deviation authority granted by the Administrator pursuant to this regu-

lation shall be limited to those operations conducted pursuant to military contracts or an emergency as determined by the Administrator and shall not be applicable to any other type of operation.

3. The Administrator shall, in any authorization granted pursuant to this regulation, specify the terms, conditions, and limitations of the authorization of deviation and each carrier shall, in the conduct of operations pursuant to military contracts or a declared emergency, comply with such terms, conditions, and limitations.

4. Grants of deviation authority hereunder for periods of 90 days or less will not be reviewed by the Board. Grants of deviation authority for a term in excess of 90 days or which in the aggregate will exceed a term of 90 days shall be subject to review by the Board, and the Administrator shall give notice of the issuance thereof to the Board as soon as it becomes apparent that the authorization is to be for more than 90 days in the aggregate. Any such long-term authorization, unless sooner revoked or rescinded by the Administrator, shall continue in effect for 90 days, and thereafter unless and until the Board or the Administrator determines that such deviation authority should not be continued. Authorizations for deviations in existence on the effective date of this regulation, if they are to be continued in effect for a period of more than 90 days after the effective date hereof, shall be subject to Board review in the same manner and with like effect as in the case of an authorization of more than 90 days issued hereunder.

This regulation supersedes Special Civil Air Regulation SR-385B and shall terminate February 1, 1955, unless sooner superseded or rescinded.

(Sec. 205 (a), 52 Stat. 984; 49 U. S. C. 425 (a). Interpret or apply secs. 601, 604; 52 Stat. 1007, 1010, as amended; 49 U. S. C. 551, 554)

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 54-730; Filed, Feb. 2, 1954;
8:53 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6140]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

GEORGE'S RADIO AND TELEVISION COMPANY, INC., ET AL.

Subpart—Advertising falsely or misleadingly: § 3.55 Demand, business or other opportunities; § 3.90 History of product or offering; § 3.155 Prices: Exaggerated as regular and customary; savings and discounts subsidized; usual as reduced, special, etc.; § 3.200 Sample, offer or order conformance; § 3.205 Scientific or other relevant facts. Subpart—Offering unfair, improper and deceptive inducements to purchase or deal;

§ 3.2015 Opportunities in product or service; § 3.2060 Sample, offer or order conformance; § 3.2063 Scientific or other relevant facts. In connection with the offering for sale, sale or distribution of home freezers and television sets in commerce, representing directly or by implication: (1) That participants in a food purchasing plan can buy food at wholesale prices or from a wholesaler, contrary to the fact; (2) that over-all monetary savings can be effected through the general use of frozen foods in place of corresponding foods in other forms; (3) that substantial over-all reductions in food costs will be effected through participation in a food purchasing plan; (4) that net monetary savings, however expressed, can be effected through the use of freezers purchased from respondents, unless the costs of operation, maintenance and depreciation and, in the event that the freezer is purchased on credit, the costs of such credit, are taken into account; (5) that television sets which are not of the current year's model are new, through the use of such terms as "Brand-New" or any other terms which describe said sets as new, unless the year in which said sets were current models is disclosed; (6) as the usual price of television sets, any price or value which is in excess of the price at which said sets were customarily offered for sale and sold by respondents in the recent regular course of their business; (7) that the price at which respondents' television sets are offered is lower by 50 percent or any other designated percentage, than the usual price at which said sets were customarily offered for sale and sold by respondents in the recent regular course of their business; and (8) that television sets are being offered for sale when such offer is not a genuine and bona fide offer to sell the sets so offered; prohibited.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or applies sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Cease and desist order, George's Radio and Television Company, Inc., et al., Washington, D. C., Docket 6140, December 22, 1953.]

In the Matter of George's Radio and Television Company, Inc., a Corporation, and George Wasserman, Leopold Freudberg, Solomon Grossberg, and Phillip Keller, Individually

This proceeding was instituted by complaint which charged respondents with the use of unfair and deceptive acts and practices in violation of the provisions of the Federal Trade Commission Act.

It was disposed of, as announced by the Commission's "Notice", dated December 28, 1953, through the consent settlement procedure provided in Rule V of the Commission's rules of practice as follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on December 22, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

Said order to cease and desist, thus entered of record, following the findings as to the facts¹ and conclusion,² reads as follows:

It is ordered, That respondents, George's Radio and Television Company, Inc., a corporation, and its officers, and George Wasserman and Phillip Keller, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of home freezers and television sets in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That participants in a food purchasing plan can buy food at wholesale prices or from a wholesaler, contrary to the fact.

2. That over-all monetary savings can be effected through the general use of frozen foods in place of corresponding foods in other forms.

3. That substantial over-all reductions in food costs will be effected through participation in a food purchasing plan.

4. That net monetary savings, however expressed, can be effected through the use of freezers purchased from respondents, unless the costs of operation, maintenance and depreciation and, in the event that the freezer is purchased on credit, the costs of such credit, are taken into account.

5. That television sets which are not of the current year's model are new, through the use of such terms as "Brand-New" or any other terms which describe said sets as new, unless the year in which said sets were current models is disclosed.

6. As the usual price of television sets, any price or value which is in excess of the price at which said sets were customarily offered for sale and sold by respondents in the recent regular course of their business.

7. That the price at which respondents' television sets are offered is lower by 50 percent or any other designated percentage, than the usual price at which said sets were customarily offered for sale and sold by respondents in the recent regular course of their business.

8. That television sets are being offered for sale when such offer is not a genuine and bona fide offer to sell the sets so offered.

It is further ordered, That respondents, George's Radio and Television Company, Inc., and George Wasserman and Phillip Keller, individually, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied therewith.

It is further ordered, That the complaint be, and it hereby is, dismissed as

¹ Filed as part of original document.

to the respondents Leopold Freudberg and Solomon Grossberg, individually.

Issued: December 28, 1953.

By direction of the Commission.

[SEAL] ALEX. AKERMAN, JR.,
Secretary.

[F. R. Doc. 54-693; Filed, Feb. 2, 1954;
8:47 a. m.]

[Docket No. 4878]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

ORDER DISPOSING OF MOTIONS FOR MODIFICATION OR SETTING ASIDE OF FINDINGS AS TO THE FACTS, CONCLUSION, AND ORDER TO CEASE AND DESIST; MODIFYING ORDER TO CEASE AND DESIST AND DISMISSING COMPLAINT AS TO RESPONDENT, FRANK A. BOND

In the matter of Chain Institute, Inc., an incorporated trade association, its directors, officers, and members; et al.

This matter came on to be heard by the Commission upon the application and motion, with supporting affidavits and memorandum, for modification or setting aside of the findings as to the facts, conclusion, and order to cease and desist, filed by respondents Chain Institute, Inc., American Chain & Cable Company, Inc., The Bridgeport Chain & Manufacturing Company, The McKay Company, Hodell Chain Company, St. Pierre Chain Corporation, S. G. Taylor Chain Company, Cleveland Chain & Manufacturing Company, Campbell Chain Company, Nixdorf-Krein Manufacturing Company, Peerless Chain Company, Round California Chain Company, The John M. Russell Manufacturing Company, Inc., Seattle Chain & Mfg. Company, Turner & Seymour Manufacturing Company, Western Chain Products Company, Woodhouse Chain Works, Dennis A. Merriman, Wm. D. Kirkpatrick, and George J. Campbell, Jr.; the motion, with supporting affidavit, to vacate or modify the findings as to the facts, conclusion, and order to cease and desist, filed by respondent Columbus McKinnon Chain Corporation; answer to said motions filed by counsel supporting the complaint; and reply to said answer filed by certain of the respondents.

The Commission having duly considered the motions filed by certain of the respondents herein for the setting aside or modification of the findings as to the facts, conclusion, and order to cease and desist, and the requests for permission to file briefs and to be heard in oral argument on such motions, answer of counsel supporting the complaint, reply by certain of the respondents, and pertinent portions of the record, and being of the opinion, for the reasons appearing in the accompanying opinion of the Commission, that said motions and requests are without merit except for the request that the complaint be dismissed as to respondent Frank A. Bond:

It is ordered, That the application and motion for modification or setting aside

of the findings as to the facts, conclusion, and order to cease and desist, filed by respondents Chain Institute, Inc., American Chain & Cable Company, Inc., The Bridgeport Chain & Manufacturing Company, The McKay Company, Hodell Chain Company, St. Pierre Chain Corporation, S. G. Taylor Chain Company, Cleveland Chain & Manufacturing Company, Campbell Chain Company, Nixdorf-Krein Manufacturing Company, Peerless Chain Company, Round California Chain Company, The John M. Russell Manufacturing Company, Inc., Seattle Chain & Mfg. Company, Turner & Seymour Manufacturing Company, Western Chain Products Company, Woodhouse Chain Works, Dennis A. Merriman, Wm. D. Kirkpatrick, and George J. Campbell, Jr., and the motion to vacate or modify the findings as to the facts, conclusion, and order to cease and desist, filed by respondent Columbus McKinnon Chain Corporation, and the requests for permission to file briefs and to be heard in oral argument on said motions, be, and they hereby are, denied except for the request that the complaint be dismissed as to respondent Frank A. Bond.

It is further ordered, That the order to cease and desist heretofore entered in this matter be, and it hereby is, modified by striking therefrom Frank A. Bond as a respondent against whom said order was directed.

It is further ordered, That the amended complaint herein be, and it hereby is, dismissed as to respondent Frank A. Bond.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45)

Issued: December 28, 1953.

By the Commission.

[SEAL] ALEX. AKERMAN, JR.,
Secretary.

Chairman Howrey delivered the opinion of the Commission.

This is one of a number of motions, filed in recent months, to reopen and reconsider matters, previously adjudicated, upon the ground that there have been changes in the membership of the Commission.

This particular case was decided during February 1953, when the Commission was comprised of Commissioners Mead, Mason, Carson, Spingarn and Carretta, and is now pending before the United States Court of Appeals for the Eighth Circuit. Of the present Commission, Commissioner Mead is the only member who voted with the majority when the case was adjudicated on the merits. Commissioner Mason dissented. Commissioner Carretta did not participate for the reason that oral argument was heard before he became a member. Chairman Howrey and Commissioner Gwynne have not, of course, participated in any phase of the proceeding.¹

The complaint was issued on December 22, 1942. Lengthy hearings were held before a hearing examiner and con-

cluded in August 1948. The examiner issued a recommended decision on September 25, 1948, and an amended decision at a later date. Thereafter, an appeal was taken to the full Commission, and oral argument was heard on April 7, 1949. The case was re-argued before the Commission on September 24, 1950.

On April 20, 1953, respondents filed their petition for review with the court of appeals. However, prior to the time the record was certified to that court and following the aforementioned changes in the membership of the Commission, respondents filed the present motion asking us to reopen and reconsider a number of enumerated questions.

It appears to us that the controlling ground offered by respondents in support of the motion is this change in membership.

We are not disposed to grant a motion predicated principally upon such a ground. The Commission is an independent and continuing statutory body. The terms of its members were arranged by Congress in a manner to prevent any abrupt dislocations in the discharge of its responsibilities.

More importantly, the Commission, like the courts, operates prospectively, not retroactively. This principle is fundamental, we believe, to our system of law, both administrative and judicial. While the views of individual commissioners may differ, each is like a member of the judiciary in the sense that he customarily makes decisions on upcoming issues on a case-by-case basis. A judge appointed to fill a vacancy on the bench does not set about to reopen and retry previously adjudicated cases simply because he is a new member.

The machinery of the quasi-judicial agency, like the courts, contemplates a continuing process; it looks to current litigation, not past litigation. If our procedures were otherwise, delay and inaction would surround enforcement of the statutes committed to the Commission's jurisdiction. To grant the present motion would be to require a third review of a voluminous record made many years ago.

The principal question presented by the motion, as we see it, is whether the Commission, in prescribing a remedy in a conspiracy case, can require respondents not only to cease and desist their alleged conspiratorial activity but also to stop the individual use of certain delivered pricing methods. This is an important question and if it were not for the overriding considerations already stated, the motion might be well grounded. However, since the question of the remedy is one of law, the respondents will not be prejudiced. They will, we are certain, receive a full hearing on this question in the court of appeals.

Commissioner Mead has filed a separate opinion.²

Commissioner Carretta has filed a separate opinion dissenting in part and concurring in part.³

[F. R. Doc. 54-694; Filed, Feb. 2, 1954;
8:47 a. m.]

² Filed as part of the original document.

¹ Chairman Howrey became a member of the Commission on April 1, 1953, and Commissioner Gwynne on September 27, 1953.

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of the Treasury

Subchapter J—Procurement

[CGFR-53-48]

PART 116—PROCEDURES FOR PURCHASING

Subpart 116.01—General Provisions

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AUTHORITY: §§ 116.01-1 to 116.04-25 issued under 62 Stat. 21; 41 U. S. C. 151-161.

SUBPART 116.01—GENERAL PROVISIONS

PROCUREMENT AUTHORITY AND LIMITATIONS

§ 116.01-1 *Procurement authority.* The basic authority for the procurement of supplies and services for the Coast

Guard is contained in the Armed Services Procurement Act of 1947 (41 U. S. C. 151-161), hereinafter referred to as "the act."

§ 116.01-2 *Supplies and services defined.* The term "supplies" as used in this part means all property except land or interests in land. It includes by way of description and without limitation, materials, supplies, equipment, public works, buildings, facilities, ships, floating equipment, vessels of every character, type, and description, aircraft, tools, and parts and accessories for such items, and the alteration or installation of any of the foregoing. The term "services" includes by way of description and without limitation, personal or professional services of individuals or organizations; non-personal services; educational or training services; architectural or engineering services; maintenance or repair services; transportation; utility services; experimental, developmental, or research work; and construction work.

§ 116.01-3 *General limitations upon the use of negotiation.* No contract shall be entered into as a result of negotiation unless the contemplated procurement comes within the circumstances permitting negotiation as stated in the act and as set forth in Subpart 116.03.

§ 116.01-4 *Certain negotiations restricted to Headquarters.* The negotiation of contracts under certain circumstances require special determinations and findings by the Commandant or by the Comptroller. Accordingly, the authority to negotiate contracts under such circumstances is restricted to Headquarters as set forth in Subpart 116.03. The negotiation of such contracts shall be in accordance with the requirements of the act, and shall be governed, insofar as practicable, by the procedures established by the Armed Services Procurement Regulations.

§ 116.01-5 *Approval of work projects.* The Commandant's approval of the project or work is required prior to the execution of a contract or the work by a field unit under the following conditions:

(a) When the proposed contract involves major overhaul of aircraft and/or aircraft engines.

(b) Under the conditions prescribed by current Engineering directives.

(c) A change in or establishment of an aid to navigation.

(d) New construction or Special Fund Projects.

§ 116.01-6 *Monetary limitations.* (a) Contracts for construction projects which have previously been approved by the Commandant and contracts for emergency repairs may be executed by District Offices and Headquarters units subject only to the availability of allotted funds and without limitation on amount.

(b) Other contracts executed shall be limited to those with a value not exceeding the amounts set forth hereinafter. If in excess of such amounts, the contract shall be referred to the Commandant (FS) for execution at Headquarters or for subsequent execution by the District Offices and Headquarters units in accordance with the specific directions

from Headquarters. The District Commander may authorize other field units to execute a specific contract costing between \$1,000 and \$75,000 providing all requirements are met.

(c) The maximum value of each contract which District Offices, Headquarters units and other Field units may execute is as follows:

- (1) Offices of District Commanders, \$75,000.
- (2) Coast Guard Yard, \$75,000.
- (3) Coast Guard Supply Centers, \$75,000.
- (4) Aircraft Repair and Supply Base, \$100,000.
- (5) Coast Guard Academy, \$10,000.
- (6) Coast Guard Training Station, Groton, Conn., \$10,000.
- (7) Coast Guard Receiving Center, Cape May, N. J., \$10,000.
- (8) All other Headquarters units, \$2,000.
- (9) All other Field units, \$1,000.

§ 116.01-7 *Contract requirements.* Contracting officers attached to field units are authorized to execute contracts and effect purchase of supplies and services required for their units subject to the limitations set forth above, and subject to the following requirements:

- (a) Availability of allotted funds.
- (b) When the items are not readily available from Coast Guard, Navy or other Government sources of supply.
- (c) When the items are not prohibited for the use intended.
- (d) When the items are not in excess of authorized allowances.

§ 116.01-8 *Referral to Headquarters.* All questions relative to contract procedure and requests to depart from standard contract provisions shall be referred to the Commandant (FS-1).

§ 116.01-9 *Commercial procurement by vessels and stations.* Commercial procurement of supplies and services by vessels and stations shall be confined to the following:

- (a) Procurement under existing contracts.
- (b) When time will not permit the referral of the purchase requirement to a District Office, Supply Depot or Supply Center.

§ 116.01-10 *Procurement against defaulting contractors.* (a) When a contractor fails, or it becomes apparent that he will fail, to perform the terms and conditions of a contract, a complete report of all circumstances, including the contract number and the recommendations of the contracting officer, shall be forwarded to the Commandant (FS-1) for determination of the action to be taken. If the Commandant determines that the contract should be terminated for default, any supplies or services still required after such termination may be purchased against the contractor's account, in the open market or otherwise.

(b) For procedure to be followed in default of contractors on orders placed under contracts of the Federal Supply Service, General Services Administration, see instructions contained in the "Index and Guide to Government Sources of Supply" under the section headed "Performance and Default," published by the Federal Supply Service, General Services Administration.

lished by the Federal Supply Service, General Services Administration.

§ 116.01-11 *Procurement of supplies and services for the CG Auxiliary—(a) Authority.* 14 U. S. C. 830 provides for the payment from CG appropriations of actual necessary expenses incurred in the operation of any privately-owned motorboat, yacht, aircraft, or radio station when assigned to Coast Guard for its use. "Actual necessary expenses" as used herein includes: payment for fuel, oil, power, water, supplies, provisions, replacement or repair of equipment, repair of any damaged Auxiliary facility and for the constructive or actual loss of any Auxiliary facility where it is determined, under applicable regulations, that responsibility for the loss or damage necessitating such replacement or repair of equipment or for the constructive or actual loss of such motorboat, yacht, aircraft, or radio station rests with the Coast Guard.

(b) *Providing supplies and services.* Whenever practicable, all supplies and services required for the operation of an Auxiliary facility by Coast Guard will be furnished by Coast Guard sources of supply or obtained in the same manner as other supplies and services are procured. Likewise, upon return of an Auxiliary facility to its owner, any damage sustained by the facility or its equipment shall, whenever practicable, be repaired by the Coast Guard in the same manner as repairs are effected to Coast Guard facilities and their equipment.

(c) *Supplies and repairs furnished by an Auxiliary member.* Where an Auxiliary member furnishes supplies necessary in the operation of an Auxiliary facility in the performance of Coast Guard duties, or accomplishes or has accomplished repair or replacement of damaged equipment or damages to the facility itself, reimbursement for such supplies or repair will be made to the Auxiliary member.

(d) *Sale of clothing, flags, and pennants.* Items such as clothing, flags and pennants, not considered as actual necessary expenses of operation, may be sold to Auxiliary members.

DELEGATION OF AUTHORITY

§ 116.01-20 *Procurement responsibility.* The Commandant, having been designated as the "agency head" under the act, is responsible for the procurement policies and activities of the Coast Guard.

§ 116.01-21 *Chief Officer Responsible for Procurement.* The administration of procurement policies and activities as determined by the Commandant as "agency head" is hereby delegated to the Comptroller who is hereby designated as the "Chief Officer Responsible for Procurement" in accordance with the act.

§ 116.01-22 *Contracting authority.* In accordance with the authority contained in the act, and subject to the limitations set forth through this section, designated Coast Guard Contracting Officers are authorized to enter into contracts on behalf of the Government and in the name of the United States of America, by formal advertising, or by negotiation, or by

procurement within the Government as hereinafter provided, for supplies and services required for the Coast Guard.

§ 116.01-23 *Contracting officer at Headquarters.* At Coast Guard Headquarters, all procurement activities shall be administered by the Supply Division. The Chief of the Procurement Section, Supply Division, shall be the contracting officer. In the absence of the Chief of the Procurement Section, the Chief of the Supply Division shall act as contracting officer.

§ 116.01-24 *Contracting officers of field units—(a) Delegation of authority by Commandant.* Subject to the limitations set forth herein, the Commandant hereby delegates authority to procure supplies and services to the following Coast Guard officers:

- (1) District Commanders.
- (2) The Superintendent of the Coast Guard Academy.
- (3) The Commanding Officer of the Coast Guard Yard.
- (4) The Commanding Officer of the Coast Guard Aircraft Repair and Supply Base.
- (5) Commanding Officers of Coast Guard Supply Centers.
- (6) Commanding Officers of Coast Guard Supply Depots.
- (7) Commanding Officers of Coast Guard Training Stations.
- (8) Commanding Officers (not Officers in Charge) of other Field and Headquarters Units.

(b) *Designation of contracting officer.* The officers listed above may designate an officer assigned to finance and supply duty as contracting officer. The Commanding Officer, CG Yard also may designate a qualified civilian employee as contracting officer. Designations of contracting officers shall be made in writing.

(c) *Limitation of authority to act as contracting officer.* The delegation of authority to act as "contracting officer" is limited strictly to those officers listed in paragraphs (a) and (b) of this section, and no other officers shall exercise such authority without the prior approval of the Commandant (F).

§ 116.01-25 *Authorized representatives of contracting officers.* Contracting officers may designate an officer or civilian official to act as their representative whenever necessary in connection with the performance of contracts executed by them. Such designation may be instructions referring to the particular contractual instrument, or classes of instruments, and may to the extent not specifically prohibited by the terms of the contract involved, empower the representative to take any or all action thereunder which could lawfully be taken by the contracting officer. In no event, however, shall a representative, by virtue of his designation only, be empowered to execute any contract or supplementary agreement, or change any conditions of the contract. The delegation and designation for such authority shall be contained in a letter signed by the contracting officer and addressed to the contractor, with copies to the officer so designated.

§ 116.01-26 *Conduct of procurement personnel.* In accordance with restrictions imposed on Government officers and agents by applicable sections of the Criminal Code (especially 18 U. S. Code 434, 283, 216, and 281), and in accordance with the general policy against conflicting private interests of Government officers and employees, every person charged with the administration and expenditure of Government funds must refrain from such conduct as would interfere with the full, proper and impartial discharge of his official duties, or as would give rise to a reasonable suspicion that his conduct was motivated by self interest rather than by the best interests of the Government.

METHODS OF PROCUREMENT

§ 116.01-30 *Methods of procurement defined.* Procurement within the Coast Guard shall be made in accordance with the provisions of the Act and in compliance with the instructions contained in this section. The two principal methods of procurement are by means of formal advertising and by means of negotiation. Procurement shall generally be effected by advertising for bids and thereafter awarding a contract to the lowest responsible bidder. Procurement by means of negotiation may be effected, however, when authorized by and conducted in accordance with the detailed requirements and procedures set forth. Procurement may also be effected by placing orders with any Government agency or Government-owned establishment, or by means of joint- or single-department procurement.

§ 116.01-31 *Methods of commercial purchase employed by Coast Guard.* Three methods of commercial purchase by Coast Guard units are authorized:

- (a) Purchases made under existing contracts.
- (b) Purchases made by advertising.
- (c) Purchases made by negotiation.

SOURCES OF SUPPLY

§ 116.01-40 *Government sources of supply.* It is the policy of the Coast Guard to procure supplies and services from the following sources whenever available:

- (a) Within the command.
- (b) Coast Guard Supply Depots and Centers and other Supply activities.
- (c) Federal Supply Service.
- (d) Navy Department.
- (e) Other Government Agency Supply Units.
- (f) Existing Coast Guard contracts.
- (g) Federal Supply Service contracts.
- (h) Other Government Agency contracts.

§ 116.01-41 *Mandatory sources of supply.* Certain supplies and services must be obtained from the sources designated in this Subpart. A "Federal Supply Schedule Index (including Index to the Stock Catalog and Other Government Sources of Supply)" shall be maintained in each district office. Headquarters unit, and other units to which a supply officer is regularly assigned. Copies will be obtained in the manner prescribed in § 116.01-42.

§ 116.01-42 *Federal supply service contracts.* (a) Pursuant to chapter 4 of Title 41 U. S. C., the supplies and services listed below, when not available from Government sources, shall be procured only under Federal Supply Service contracts, except when required for immediate use and the time of delivery specified in the contract will not meet the actual necessity of the service. In such cases, procurement from other sources may be made of such quantity as may be immediately required. A statement of the necessity for such action will be made on the public voucher. A wide range of items fall within the class listings below which are furnished as a guide only. Specific items, descriptions and prices are listed in Federal Supply Schedules. Supply Officers shall frequently examine Federal Supply Schedules and Check Lists issued in connection therewith to determine any additions to the list of mandatory classes or items, or modifications thereon. Nonmandatory items listed on schedules, should be considered when effecting procurement, to take advantage of prices which may be lower in many instances than can be secured in certain localities.

Class	Item
4	Caps, blasting; dynamite; plugs, blasting; powder, blasting; primer and booster charges.
7, 14	Gasoline, fuel oil and kerosene when included in Federal Supply Schedules and bulletins; provided they are not included in Navy contract.
8	Motor vehicle accessories and parts. Tires and tubes. Tire chains.
17	Lamps, electric and photographic flash.
26	Office furniture, steel and wood, including chairs, lockers, filing sections, desks, tables, etc.
26	Household and quarters furniture.
27	Floor and window coverings.
35	Books.
40	Machines, floor polishing and scrubbing, cylindrical type, electric, with accessories.
40	Machine tools, small machinery and accessories.
40	Pads, floor polishing and scrubbing machine, steel wool, disk type.
53	Binders, loose leaf.
53	Cups, drinking, paper.
54	Office equipment; purchase, rental, repair, and maintenance.
83	Airplane tires and tubes.
106	Recording and transcription service except instantaneous recordings.

(b) Necessary files of current Federal Supply Schedules (all mandatory classes and other classes as selected by the unit concerned) shall be maintained at each district office, Headquarters unit, and other unit to which a supply officer is regularly assigned. Each unit desiring Federal Supply Schedules and Catalogs shall submit its requirements on GSA Form 457 to the General Services Administration Regional Office for the area in which the ordering office is located. The required forms may be obtained direct from the Federal Supply Service or its regional warehouses. Subordinate units of a district shall request schedules and price lists from the district office.

* When available from Federal Prison Industries, Inc., clearance is required prior to effecting purchase under Federal Supply service contracts.

(c) Clearances: The term "clearance," as it pertains to Federal Supply Schedules, is defined as a written statement furnished by an authorized Federal Supply Service official at the request of an ordering agency to the effect that a contemplated purchase is not covered by a Federal Supply Schedule Contract mandatory upon the purchaser. In addition to the primary objective of assuring that the mandatory features of Federal Supply Schedule Contracts are properly observed, requests for clearance also serve the purpose of providing data to the General Services Administration for use in determining the adequacy of coverage of the Federal Supply Schedules. It is not necessary that agencies covered by mandatory provisions request clearance for purchases of items where similar items are not on Federal Supply Schedules. Also, clearance shall not be requested when agencies covered by mandatory provisions find it necessary to make an open market purchase to meet a justifiable emergency.

(d) Federal Supply Schedule Check Lists: Federal Supply Schedule Check Lists are issued quarterly to Federal agencies by the General Services Administration to furnish current data on the Federal Supply Schedules. These listings show the status of all Federal Supply Schedules in effect and amendments thereto, as of the date stated, with information as to the mandatory coverage and other pertinent remarks. Additional information desired concerning any particular schedule may be obtained by writing to the General Services Administration regional office executing the contract or by telephoning the number indicated in each schedule.

§ 116.01-43 *Federal Supply Service Warehouses.* Certain supplies when not available from Coast Guard or Navy sources shall be procured from Federal Supply Service regional warehouses. Warehouses are located at Washington, D. C.; Boston, Mass.; New York, N. Y.; Cleveland, Ohio; Chicago, Ill.; Atlanta, Ga.; Fort Worth, Tex.; Kansas City, Mo.; Denver, Colo.; San Francisco, Calif.; and Seattle, Wash. Supplies carried in stock are listed in the Federal Supply Service Stock Catalog. Copy of this publication shall be maintained at each district office, Headquarters unit, and other units to which a supply officer is regularly assigned. Purchase orders shall be submitted to the nearest regional warehouse on original and one copy of Form CG-2557, and shall be routed through the district office to permit review and utilization of Coast Guard facilities in effecting delivery.

§ 116.01-44 *Federal Prison Industries, Inc.* (a) Under the provisions of 18 U. S. C. 4124, certain supplies and services must be procured from the Federal Prison Industries, Inc., or a clearance obtained, before they can be procured from commercial sources. The General Accounting Office will disallow all payments unless clearance has been granted in advance of purchase from commercial sources. A wide range of items fall within the class listings below which are furnished as a guide only. Specific items, descriptions and prices

are listed in the publication "Schedule of Products Made in Federal Penal and Correctional Institutions," copies of which may be obtained by letter request to the Commandant (FS-1). Copies of the schedules shall be maintained at each district office, Headquarters unit, and other units to which a supply officer is regularly assigned.

Class	Item
9	Boats; wooden, less than 70 feet long, for delivery west of the Mississippi River.
38	Brooms; corn.
20, 38	Brushes; various types.
40	Brushes, polishing and scrubbing machines.
21	Cargo nets.
	All classes Castings; gray iron, various types.
24	Canvas goods; various articles.
COTTON TEXTILES:	
24	Cloth; awning.
24	Duck; cotton.
27	Drills.
27	Tickling, mattress and pillow.
	Dry cleaning service (dry cleaning service required by units within 100 miles of the U. S. Penitentiary, Alcatraz, Calif.).
FURNITURE:	
26	Fiber; various articles.
26	Wood; various articles.
26, 34	Furniture and specialties; metal.
57, 63	various articles.
37	Gloves and mittens; various types.
41	Handles; striking tool.
68	Laboratory animals.
	Laundry services.
27	Mattresses; cotton felt.
53	Paper weights; gray iron, leather covered.
	Printing.
37, 72	Shoes; various types.
26	Steel storage shelving; all types.

(b) Clearance C-27650 authorizes purchase from commercial sources when (1) immediate delivery or performance is required by public exigency which will not admit of delay in procurement, and (2) suitable second-hand property can be procured. Requests for clearances shall be forwarded to the Commandant (FS-1) together with a detailed statement as to the necessity for procurement from commercial sources. Purchases covered by this clearance will make reference to the applicable clearance on the pertinent public voucher. When procurement has been made in the open market under the authority of a clearance, the original or a copy of the applicable specific clearance will accompany the public voucher to which it pertains. When more than one public voucher is issued for items covered by one clearance, subsequent public vouchers will bear reference to the public voucher with which the clearance was filed.

§ 116.01-45 *Post Office Department.* Envelopes shall be purchased only under contracts executed by the Post Office Department. A publication "Award of Contracts for Envelopes" is issued periodically and lists all available types of envelopes, as well as necessary contract information. Copies of this contract bulletin are available through Headquarters. Orders placed for envelopes shall be forwarded direct to the

contractor and need not be forwarded via Headquarters.

§ 116.01-46 *Committee on Purchase of Blind-Made Products.* Under the requirements of the act of June 25, 1938 (52 Stat. 1196) (41 U. S. C. 46-48), supplies available from the Committee on Purchase of Blind-Made Products shall be procured from that source when not available from Government Sources. A listing of items available from this source is included in the General Services Administration Store Stock Catalog under a separate section. This listing will distinguish between those blind-made products carried in stock by the Federal Supply Service and those available direct from the National Industries for the Blind. Procurement procedures for obtaining these items from the two sources are outlined in §§ 116.01-47-116.01-48. A clearance dated March 27, 1942, effective until rescinded, grants authority to procure supplies listed as a Blind-made Product from commercial sources when (a) military necessity may require delivery within a period of 2 weeks, (b) less than a single unit is required, or (c) for use outside continental United States. When an item is obtained from commercial sources under authority of this clearance, reference to the clearance shall be made on the payment voucher.

§ 116.01-47 *Purchase of blind-made products through Federal Supply Service.* Purchase Orders (Form CG-2557) shall be submitted to the supporting Federal Supply Service Supply Center for blind-made products regardless of whether or not that facility actually stocks the item, except as noted in § 116.01-48.

§ 116.01-48 *Purchase of blind-made products from the National Industries for the Blind.* Purchase Orders (Form CG-2557) shall be submitted to the National Industries for the Blind, 15 West 16th Street, New York 11, N. Y., when the purchase meets the following requirements: (a) Items require overseas packaging or packing; (b) instances where the ordering activity is so located that it would be more practical and economical to purchase direct rather than through a Federal Supply Service Supply Center; and (c) Items required in carload lots or over.

§ 116.01-49 *Surplus property.* To the extent possible, supplies shall be obtained from surplus property in the hands of disposal agencies, or from surplus or excess stocks in the hands of other Government agencies. Coast Guard units shall obtain prior authority from the Commandant (FS) for the acquisition of property under Title 14, U. S. C., sec. 640.

PROCUREMENT OF DOMESTIC AND FOREIGN MATERIALS AND PRODUCTS

§ 116.01-60 *Statutory authority.* Subject to the exceptions authorized therein, the "Buy American Act," approved March 3, 1933 (47 Stat. 1520) (41 U. S. C. 10a-d), prohibits the acquisition for public use by any department, or for use in connection with the performance of any department contract for the con-

struction, alteration, or repair of any public building or public work, of (a) unmanufactured supplies unless mined or produced in the United States, and (b) manufactured supplies unless manufactured in the United States substantially all from supplies mined, produced, or manufactured in the United States.

§ 116.01-61 *Policy regarding purchases from sources within Soviet-controlled countries or areas.* (a) It is the policy of the Coast Guard not to procure supplies or manufactured products originating from sources within Soviet-controlled countries or areas. The authorizations and exceptions to the "Buy American Act" set forth in subsequent paragraphs shall not be construed so as to permit exceptions to this policy. In cases of doubt, questions as to whether a specific country or area is Soviet-controlled will be referred to the Commandant (FS).

(b) Exceptions to this policy will be made only after specific approval by the Commandant (FS).

§ 116.01-62 *Terminology.* (a) The term "United States," when used in a geographical sense, includes the United States and any place subject to the jurisdiction of the United States.

(b) The term "public use," "public buildings," and "public work" shall mean use by, public buildings of, and public work of, the United States, the District of Columbia, Hawaii, Alaska, Puerto Rico, American Samoa, the Canal Zone, and the Virgin Islands.

(c) Supplies shall be considered to be manufactured "substantially all" from United States supplies whenever the cost of foreign supplies used in such manufacture constitutes 25 percent or less of the cost of all supplies used in such manufacture.

§ 116.01-63 *Action required by non-compliance by contractors.* (a) Where it is determined that the contractor performing a construction contract has not complied with the provisions of the act, the contracting officer will submit a report to the Commandant (FS) setting forth complete details relative to the use of foreign materials and supplies.

(b) The Commandant (FS) will review such reports for accuracy and completeness, verifying pertinent portions as necessary, and forward the reports to the Secretary of the Treasury.

§ 116.01-64 *Findings and action by the Secretary of the Treasury.* The Secretary of the Treasury, upon finding that in the performance of a construction contract there has been a failure to comply with the "Buy American Act" provision, shall make public his findings (including therein the name of the contractor obligated under such contract) and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractor, materialmen, or suppliers with which such contractor is associated or affiliated, within a period of three years after such finding is made public.

§ 116.01-65 *Exceptions that may be authorized by the Secretary.* The Secre-

tary of the Treasury is authorized by the "Buy American Act" to grant exceptions thereto when application of the act would cause any one of the situations enumerated below:

(a) Would be inconsistent with the public interest.

(b) Would unreasonably increase the cost.

(c) Would be impracticable in connection with construction or repair work.

However, exceptions granted under this authority must be incorporated into the contract specifications prior to solicitation of bids and a public record made of the supporting findings.

§ 116.01-66 Determination of unreasonable cost. (a) In accordance with regulations of the General Services Administration, Title I, Personal Property Management, the cost of supplies would be unreasonable and, therefore, the "Buy American Act" will not apply when the lowest cost of domestic supplies exceeds the lowest cost of foreign supplies by 25 percent or more of the foreign bid (100 percent when the cost of foreign supplies is \$100 or less. However, when the base cost of foreign supplies is enhanced by duty paid the United States, the differential of 25 percent or 100 percent shall be applied only to the base cost with the duty then added to the sum of the differential. Accordingly, the cost of domestic supplies is considered unreasonable when it exceeds the cost of foreign supplies, plus the amount of the differential and, when applicable, plus the amount of duty. Examples of application are as follows:

Example No. 1—Foreign bid would be accepted

Domestic bid.....	\$12,400.00
Foreign bid (duty included).....	10,000.00
Minus duty.....	1,000.00
Cost excluding duty.....	9,000.00
Percent of differential.....	.25
Differential.....	2,250.00
Plus cost excluding duty.....	9,000.00
Plus duty.....	1,000.00
Total cost.....	12,250.00

Example No. 2—Domestic bid would be accepted

Domestic bid.....	\$12,400.00
Foreign bid (no duty involved).....	10,000.00
Percent of differential.....	.25
Differential.....	2,500.00
Plus cost.....	10,000.00
Total cost.....	12,500.00

(b) The contracting officer shall submit to the Commandant (FS) for consideration and approval any case where the differential is less than 25 percent but the amount of the differential exceeds \$5,000. Cases where the differential is less than 25 percent but the amount of the differential does not exceed \$5,000 may be forwarded for consideration if the contracting officer considers the amount of the differential to be unreasonable.

§ 116.01-67 Exception of printed matter. In accordance with § 116-65, the

Secretary of the Treasury, by letter dated 24 August 1953, determined that purchase of the following supplies, as required by the Coast Guard is in the public interest and such purchase is authorized: trade, text, technical, and scientific books, newspapers, magazines, periodicals and printed briefs, charts and maps, which are not printed in the United States and for which domestic editions are not available.

§ 116.01-68 Exceptions due to availability. (a) The "Buy American Act" does not apply to the following materials:

(1) Supplies which are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(2) Such materials, from which the supplies to be used are manufactured, as are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(b) Accordingly, the supplies listed below may be procured without regard to country of origin except as restricted by § 116.01-61.

SUPPLIES AUTHORIZED TO BE PROCURED FOR PUBLIC USE

Agar.
Aluminum.
Antimony.
Argols, tartar and wine lees.
Asbestos.
Bananas.
Bauxite.
Beef extract.
Beryl.
Bismuth.
Brazil nuts.
Cadmium.
Calcium cyanamide.
Capers.
Cashew nuts.
Castor beans.
Celestite.
Chalk, English.
Chicle.
Chrome ore or chromite.
Cinchona bark.
Cobalt (ore and metals).
Cocoa beans.
Coconut.
Coffee.
Columbite.
Copper.
Copper.
Cork.
Corundum.
Cryolite, natural.
Damar gum.
Derris cube and timbo roots.
Diamonds, industrial and abrasive.
Ergot.
Fiber, coir, abaca and agave.
Goat and kid skins.
Graphite.
Hyoscine.
Iodine.
Ipecac and emetine.
Jute and jute burlaps.
Kaurigum.
Kyanite.
Lac and shellac.
Lead.
Logs, veneer, and lumber from balsa, greenheart, lignum vitae, mahogany and teak.
Manganese.
Menthol, natural.
Mercury.
Mica.
Monazite.
Nickel.

Nitroguanidine.
Nux vomica.
Oiticica oil.
Olive oil.
Olives, green and stuffed.
Opium.
Palm oil.
Crude petroleum, petroleum fuels, and petroleum lubricants.
Platinum and related group metals.
Pulp for paper production.
Pyrethrum flowers.
Quartz crystals.
Radium salts.
Rubber, crude and latex.
Rutile.
Santonin.
Sardines.
Silk.
Sperm oil.
Spices.
Talc, steatite.
Tantalite.
Tapioca.
Tea.
Tin.
Tungsten.
Vanilla beans.
Wax carnauba.
Zinc.
Zirconium.

SUPPLIES AUTHORIZED TO BE USED IN THE CONSTRUCTION, ALTERATION, OR REPAIR OF ANY PUBLIC BUILDING OR PUBLIC WORK

Aluminum.
Antimony.
Asbestos.
Bauxite.
Chrome ore or chromite.
Copper.
Damar gum.
Jute and jute burlaps.
Kaurigum.
Lac and shellac.
Lead.
Mercury.
Mica.
Nickel.
Platinum and related group metals.
Rubber, crude and latex.
Timber, balsa, greenheart, lignum vitae, mahogany and teak.
Tin.
Tungsten.
Zinc.

POLICY TOWARD AND ASSISTANCE TO SMALL BUSINESS CONCERNS

§ 116.01-70 Definition of small business concerns. It shall be the policy of the Coast Guard to place with small business concerns (herein considered to be any concern which employs fewer than 500 persons) a fair proportion of the total procurement of supplies and services. As a means of carrying out this policy, and when not clearly to the disadvantage of the Coast Guard, the supplies or services to be procured shall be procured in reasonably small lots so as to enable and encourage small business concerns to make bids or quotations thereon. Each contracting office shall, in effecting procurement, obtain necessary information to determine whether or not the supplier is a small business concern. To obtain this information the following clause shall be inserted in the bid or quotation portion of every invitation for proposals: "This organization, including affiliates (corporate, partnership, or joint venture), employs (500 or more) (less than 500) persons. (Strike out inapplicable words.)"

§ 116.01-71 Applicability of these instructions. These instructions are ap-

plicable to Coast Guard Headquarters, all districts, Headquarters' Units and Supply Depots.

§ 116.01-72 Policy. It is the policy of the Coast Guard that all unclassified negotiated and advertised procurement exceeding \$10,000, made in the Continental United States will be publicized when such procurements are scheduled to be opened 18 days or more from date of issue. Unclassified United States procurements exceeding \$10,000, will be scheduled to be opened 18 days or more from date of issue unless circumstances make an earlier opening essential. In such case a statement of fact supporting such action must be filed in the contract folder.

§ 116.01-73 Setting opening of bid dates. Except in cases of urgency, contracting officers should insure that opening dates for invitations and/or requests involving the purchase of special material requiring plans, blueprints, or special specifications are set so as to allow a minimum of 30 calendar days after date of mailing. It is believed that a minimum of 21 to 25 days will be sufficient in the purchase of standard items (such as hand tools) that do not require special analysis by the bidder. Reasonable requests for postponement of the time set for the opening of bids shall be referred to the requisitioning activity if unusual delay is involved; otherwise, decision should be made by the contracting officer. It is felt that permitting adequate bid time before the opening of bids and/or requests will decrease the number of requests by contractors for postponement of openings.

§ 116.01-74 Daily synopsis of purchases required. A daily synopsis of proposed purchases by negotiation and advertising will be prepared and transmitted by teletype to Bonstetter, Department of Commerce, Chicago, Illinois, in the manner hereinafter described. Such synopsis will include quantities and will consist of a minimum general description of the items procured and will include, when appropriate, commonly used names of supply items, basic materials from which fabricated, general size or dimensions, etc. Whenever procurement offices believe it advisable for security reasons, quantities may be published as "more than ----". The synopsis should include proposed purchases on the same day that the requirements become known. Do not withhold this information pending the preparation of formal documentation. Proposed procurement for the construction, alteration or repair of buildings, bridges, roads or other kinds of real property are included in the above policy. Proposed procurement for the repairs to vessels need not be included in synopsis.

§ 116.01-75 Confirmation copy of procurement required. One copy of each Invitation to Bid and/or Request for Quotation which includes items previously listed in a synopsis shall, when issued, be forwarded to Chief, Small Business Division, Office of Industry and Commerce, Room 6427, Department of Commerce, Washington 25, D.C.

§ 116.01-76 Preparation of synopsis. (a) The daily synopsis shall be prepared in strict accordance with the sample format below. Each daily synopsis message shall be delivered to the nearest Coast Guard Communications Center for transmission via NTX. Delivery from the originating unit to the Communications Center should be effected in each case by the means currently employed for other messages transmitted via NTX. A copy of this format shall be delivered to the Communications Center by the originator prior to delivery of the first message to insure transmission in the prescribed form. The routing indicator and heading required for NTX transmission will be added at the Communications Center.

(b) There follows a list of standard typewriter keyboard characters which cannot be reproduced or which are used for special purposes on teletype facilities. When one of these characters would ordinarily be used in a message, the alternate symbol shown must be used in lieu thereof:

Standard typewriter keyboard character:	Alternate symbol
1/4 or 1/2	1/4 or 1/2
¢	cts.
#	no.
&	and.
%	pct.
@	at.
*	(No alternate, do not use).
:	(hyphen).
?	/gm/.
()	/ / (slant bars).

(c) Columns 1, 2, 3, and 4 of format. Columnar heading shall not be typed on the message. These headings will be supplied by the Chicago Commerce Office. Entries in each column must be limited to the number of elite typewriter spaces indicated on the sample format and accidental "run-over" from one column to another must be corrected. Single space

all lines of description covering an item or items included in the same proposed purchase. When item descriptions require more than one line, indent second and succeeding lines one space. Single space between each proposed purchase listed.

(1) In column 1, enter the briefest possible description which will adequately identify the items. The basic noun(s) of the description should not be abbreviated but other abbreviations may be used if they are in general commercial usage.

(2) In column 2, enter the specific quantity to be purchased and the unit. If necessary, because of space restriction, enter the unit directly below the quantity. Estimates should be shown if definite quantities cannot be ascertained.

(3) In column 3, enter invitation or such other number as shall serve to identify the purchase transaction when inquiries are received from interested suppliers. Invitations for bid numbers will be followed by the letter "B". Request for proposals or quotations will be indicated in this column by the letter "Q" or, if numbered, the number will be followed by the letter "Q".

(4) In column 4, enter the approximate date for opening of formal bids and requests for quotations.

(d) Upon receipt of the teletype synopsis, the Chicago office of the Department of Commerce will consolidate the synopses of proposed purchases received from our purchasing offices with those received from purchasing offices of other agencies. In order to achieve speedy reproduction and distribution of the consolidated bid synopses on the same day the information is received, the Chicago Commerce Office has arranged to cut the necessary mimeograph stencils automatically on its receiving teletype printer. It is therefore essential that the instructions contained herein for the preparation and transmission of teletype messages be strictly adhered to.

FORMAT FOR TELETYPE MESSAGES TRANSMITTING SYNOPSIS OF PROPOSED PURCHASES TO CHICAGO COMMERCE OFFICE
(Use Elite Type)

Bonstetter, Commerce Dept., Chicago.
Synopsis No.
Contracting Officer
(enter appropriate address).

(31 elite spaces)	(16 spaces)	(16 spaces)	(13 spaces)
Remover, paint, 1-gallon can.....	500.....	01-1045-51	7-15-50
Paint, oil, flat, 5-gallon can.....	300 cans.....	01-1045-51	7-15-50
Enamel, phenolic, lusterless, outside, olive drab.....	600 gallons.....	01-1045-51	7-15-50
Torches—Welding.....	10 each.....	01-1045-51	7-17-50
Valve—Relief oil cooler.....	50 each.....	01-1047-51	7-18-50
Counter—Time interval.....	5 each.....	01-1048-51	7-20-50

§ 116.01-77 Effect on procurement. Consideration of awarding contracts in accordance with the above is set forth in Subpart 116.02 of this chapter.

CONTRACT PLACEMENT IN DISTRESSED EMPLOYMENT AREAS

§ 116.01-80 Classification of labor areas. The Department of Labor, Bureau of Employment Security, publishes bimonthly a summary of Labor Market Developments in Major Areas which gives a comparable measure of the related adequacy of the local labor supply among the major areas of the United

States. Contracting Officers who are not receiving this publication should request that all future publications be furnished from the Bureau of Employment Security, United States Department of Labor, Washington 25, D. C. The publication classifies the various areas as follows:

Group I—Areas of labor shortage. Areas in which labor shortages exist or are expected to occur in the near future which will impede "essential activities."

Group II—Areas of balanced labor supply. Areas in which current and prospective labor demand and supply are approximately in balance.

Group III—Areas of moderate labor surplus. Areas in which current and prospective labor supply moderately exceeds labor requirements.

Group IV—Areas of substantial labor surplus. Areas in which the current and the prospective labor supply substantially exceeds labor requirements.

§ 116.01-81 *Effect on procurement.* To the extent possible, procurement should be avoided in labor market areas where manpower is in short supply or in approximate balance (areas classified in Group I or Group II by the U. S. Department of Labor); and should be placed in labor market areas having surplus manpower (areas classified in Group III or Group IV). Consideration of awarding contracts in accordance with the above is set forth in Subpart 116.02.

REPORTS ON PROCUREMENT

§ 116.01-83 *Compilation of statistics as to small business concerns and negotiated contracts.* The Coast Guard is required under the act to maintain a record of the number and total value of all contracts and purchases placed with (a) small business concerns and (b) negotiated contracts; and to submit an annual report thereof at the close of the fiscal year to the President and Congress. The annual report will be prepared by the Commandant (FS) on the basis of quarterly reports submitted by District Commanders and Commanding Officers of Headquarters Units. The information necessary for the report will be compiled by reporting officers, essentially as enumerated below, throughout the fiscal year and submitted as a quarterly report to the Commandant (FS) not later than the 15th of the month following the end of the quarter. In the case of districts, reports from suballotment units shall be consolidated into the district report.

§ 116.01-84 *Outline of form of report and basis of information.* The report required shall be assembled on the basis of orders placed or contracts awarded for all types of commercial procurement, and shall be essentially in the following form:

- (a) Total number and value of purchases made from concerns employing less than 500 persons (SBC-1) \$----
- (b) Total number and value of purchases made from concerns employing 500 or more persons (SBC-2) \$----
- (c) Total number and value of purchases placed on contracts of other Government agencies (including Navy and Federal Supply Service) (SBC-3) \$----
- (d) Total number and value of purchases made under pars. (a) through (c) above. \$----
- (e) Total number and value of purchases made by advertising (CG-10) \$----
- (f) Total number and value of purchases made by negotiation for the national emergency (CG-20) \$----
- (g) Total number and value of purchases made by negotiation for the Public Exigency (CG-21) \$----
- (h) Total number and value of purchases made by negotiation not in excess of \$1,000 (CG-22) \$----

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- (i) Total number and value of purchases made by negotiation outside of the United States (CG-25) \$----
- (j) Total number and value of purchases made by negotiation when it is impracticable to Secure Competition by Formal Advertising (CG-29) \$----
- (k) Total number and value of purchases made under Navy Contracts (CG-50) \$----
- (l) Total number and value of purchases made under Federal Supply Service Contracts (CG-51) \$----
- (m) Total number and value of purchases made under contracts of other Government agencies (CG-52) \$----
- (n) Total number and value of purchases made by negotiation by authority other than above listed (indicate appropriate CG-number (CG-) \$----
- (o) Total number and value of purchases made under pars. (e) through (n) above. (This total must agree with the total indicated in par. (d)) \$----

§ 116.01-85 *Statistics to be reported.* These statistics shall not include procurement from other Government agencies but shall include purchases made from commercial concerns under the contracts of other Government Agencies, such as the Quarterly Provisions Contracts of the Navy or FS contracts. The criterion is that the Coast Guard furnishes statistics covering purchases which constitute the original acquisition of materials by the Government. Purchases made under contracts of other Government agencies should be reported under par. 3 of report (SBC-3) as regards the small business statistics portion, and without regard to number of persons employed by contractor, inasmuch as contract bulletins of other agencies do not generally identify the contract as to the number of persons employed.

§ 116.01-86 *Method of compiling statistics.* The following method of compiling the required statistics will be used: Two (2) copies of each order and/or change order will be maintained, one copy to be filed under the appropriate SBC number and the other copy to be filed under the appropriate Coast Guard number. Care will be exercised with the assignment of Coast Guard numbers so that they are in strict accord with Subpart 118.02 of this chapter and further, that the total equals the SBC numbers total. The records as maintained will be summarized at least monthly using an individual recapitulation sheet similar to that described below:

SBC OR CG NUMBER		Number of	
		orders and/or change orders	
Month and year:			Amount
July 19.....			\$-----
August 19.....			\$-----
September 19.....			\$-----
Etc.....			\$-----

EXCHANGE OF MATERIAL

§ 116.01-90 *Trade-in allowance.* The exchange of material as full or part payment for new or reconditioned material

is permitted only when authorized by law and only when the "trade-in" allowance equals or exceeds the amounts which would have been realized by the outright sale of the items. Cash sale proposals shall be solicited for all items authorized for exchange, and the bids or quotations shall be compared with the amounts offered for "trade-in" or exchange. When the cash sale bid exceeds the "trade-in" or exchange offer, the items will be sold under the bids rather than exchanged.

§ 116.01-91 *Applying proceeds of sale to purchase of replacement.* The proceeds from the sale of the old equipment may be applied toward payment or partial payment of the replacements under certain conditions. In such cases, sufficient evidence must be furnished to permit a determination that the old and new equipment are sufficiently similar so as to fall within the provisions of the applicable statute, and there must be some action toward the purchase, by issuance of an order or requisition, if not the actual consummation of the purchase, before the proceeds of the sale may be applied.

§ 116.01-92 *Availability of funds.* The proceeds from the sale of equipment in accordance with § 116.01-91 may be used in acquiring similar equipment, provided a replacement purchase is made or an obligation for the purchase of the replacement property is incurred by the end of the fiscal year following the fiscal year in which the sale was made.

TAXES AND TAX EXEMPTION CERTIFICATES

§ 116.01-104 *Federal taxes.* The United States Government is exempt from the payment of tax on the following items only: (a) Transportation of persons on Government transportation requests. When transportation requests are not used the tax must be paid and exemption will not be allowed. (b) Transportation of property under Government bill of lading. Converted commercial bills are included, and (c) Telephone, telegraph, cable, radio, and leased wire service or facilities furnished directly to the Government.

§ 116.01-105 *State and local taxes.* The United States Government is generally exempt from the payment of State and local taxes.

§ 116.01-106 *Tax exemption certificate forms.* Only one form of tax exemption certificate—Standard Form 1094 is issued by Government officers to vendors with respect to Federal taxes. Form 1094 will be issued by the cognizant contracting officer only when required by the contract to furnish proof of exemption with respect to those taxes which have been excluded from the contract price. Standard Form 1094 will be used for State and local taxes, except when a different form is required by the State or local taxing authority. The certificate will be issued to the vendor only when the price paid is exclusive of Federal, State, or local tax.

§ 116.01-107 *Refund of taxes paid.* If the vendor refuses to sell at a price exclusive of State or local tax, the certifi-

icate will be used by the Government as the basis for billing the taxing authority for refund. The certificate, supported by a memorandum copy of the payment voucher and a copy of the vendor's invoice or delivery ticket showing point of delivery, will be forwarded to the Commandant (FA-1).

§ 116.01-108 *Authority to issue.* Only those officers who have received the United States Government tax exemption identification card (Form 1094C) may issue certificates. The tax identification card contains a number which must be inserted on every certificate issued by the authorized officer.

§ 116.01-109 *How to obtain certificates and identification card.* District Commanders and commanding officers of Headquarters units may obtain certificates and identification cards by letter request to the Commandant (CHS). Units within a command may obtain certificates and identification cards by request to District Commanders. A record, listing the serial numbers of all certificates and identification cards received and the names of the person to whom issued shall be maintained. A receipt shall be taken for all certificates and identification cards issued. Certificates and identification cards shall be recalled when no longer required by the holder or when the holder is transferred outside the command. Certificates may be reissued; identification cards shall be destroyed.

§ 116.01-110 *Restrictions on issue of tax exemption certificates.* Tax exemption certificates will not be issued for (a) merchandise purchased which is subject only to the Federal tax and such tax is included in the price paid, (b) items of subsistence expense when an official or employee of the Federal Government is traveling on official business under a per diem allowance, (c) items of travel expense when an official or employee of the Federal Government is traveling on official business in his personally owned motor vehicle and is granted a mileage allowance, and (d) by individuals in official travel status, unless payment is actually made at the time of purchase.

§ 116.01-111 *Use of a single certificate.* A single certificate may be issued where purchases are made under contract providing for deliveries extending over a period of time. Orders placed under such contracts will bear the serial number of the blanket certificate.

§ 116.01-112 *Certificate for gas or oil.* When a certificate is used in connection with the purchase of gasoline or oil delivered into the fuel tank or crankcase of a motor vehicle, the license plate number or other official vehicle designation will be shown in the space provided on the certificate.

§ 116.01-113 *Separate certificate for each tax.* A separate certificate shall be used for each class of tax involved (Federal, State, or local). Care must be exercised by the purchaser to fill in the blocks provided for showing on each certificate the separate amounts or rates of taxes involved so that the certificate may be used only for the purpose in-

tended. If the space provided for showing the quantity, price, etc., of the articles purchased is not sufficient, a separate statement may be attached to the form. Blocks other than the one representing the tax involved shall be blanked out by inserting three X's. In addition to the signature and title, the identification card number of the purchaser must always be shown in the space provided therefor.

§ 116.01-114 *Payment voucher noted.* The serial number of each certificate prepared shall be shown on the payment voucher.

§ 116.01-115 *Care and safekeeping requirements.* The pertinent data as to issuance of certificates shall be listed on the tabulation sheet contained in the book of certificates. When all certificates in a book have been used the cover and tabulation sheet shall be forwarded to the issuing unit for further transmittal to the Commandant (CHS). Certificates and identification cards shall be properly safeguarded to prevent loss or unauthorized use.

SPECIFICATIONS

§ 116.01-120 *Specifications in general.* Supplies and services required shall be specified with sufficient definiteness to insure intelligent submission of proposals but not in such terms as to preclude competition. The governing factor with respect to the minimum quality shall be service requirements and the specification shall be drawn on that basis. Each unit making commercial purchases shall maintain a current file of specifications applicable to items so purchased. A formal specification in one of the numbered series shall be used whenever available.

§ 116.01-121 *Government specifications.* Invitations for bids which refer to Government specifications (Federal, Military, etc.) shall contain for the information of the prospective bidders a list of the sources of supply and current procurement instructions for the specification(s) used. This may be accomplished by including the following clause in the invitations:

Copies of the following specification(s) referred to herein (list by name and symbol or number) may be obtained from (full name and address of the Government agency from which the specification(s) may be procured). Requests for specifications should include both the title and the symbol or number of each specification desired.

§ 116.01-122 *Commercial designations.* When difficulty is experienced in the preparation of invitations in describing or specifying the nature of the purchase and a commercial make or type is known which embodies the minimum requirements, the article may be mentioned in the specification by the trade name, qualified by the words "or equal." The use of the trade name in this manner without the words "or equal," in the absence of showing that no other make will serve the purpose of the Government, is not permitted. Should articles be offered under brand names, catalog or model numbers, they must signify that

the articles so offered meet the specifications used in the invitation.

§ 116.01-123 *Patented articles.* Invitations for replacement parts of patented articles which already exist as the property of the Government shall contain the following specification:

Repair parts for (Name of Patented Article), equal to and interchangeable with parts manufactured by (Name of Manufacturer) as follows: Reference to part numbers appearing in the catalog or blueprints of the manufacturer shall be cited if known.

§ 116.01-124 *Commercial terms to be used.* The unit of weight, measure, or enumeration used in the preparation of invitations shall conform to the usual commercial practice, such as dozen, gross, ton (long, short, net, gross), hundred (C), thousand (M), etc. In certain instances the pricing unit will differ from the quantity unit, as for example in the purchase of wire, cable, rope, etc., wherein a specified lineal measurement is required and expressed in feet, yards, or fathoms, and the pricing factor is based on the weight. Under these conditions, the requirement shall be to obtain a specified length of material to be charged at a specified rate per lb. Both the length requirement and the unit price factor shall be clearly shown. The usual practice is to state the required length, estimate the weight, and show the price per unit of weight. Under these conditions the contractor is entitled to reimbursement based on the weight of the material furnished under the contract.

§ 116.01-125 *Specific dimensions.* The extension of each item must be the product of the quantity and the unit price. If the article is to meet specific dimensions but the cost is to be determined by the weight (as in the case of structural iron), units which will be used to compute the cost shall be shown in the specifications and a notation shall be entered to the effect that the price must be submitted on that basis. The bidders shall be required to submit an estimate of the weight, which will be subject to correction upon delivery.

§ 116.01-126 *Quantity required to be shown on invitation.* Definite quantities shall be shown on invitations wherever practicable. If the exact quantity cannot be determined, as in the case of term contracts, an estimated quantity shall be stated. In estimating the approximate quantities, the greatest care shall be exercised to obtain as close an estimate as possible. Where the quantity can be determined within a reasonable variance, a contract clause substantially as follows should be inserted in the invitation:

The approximation furnished is solely for the information of the bidder. The Government reserves the right to purchase only such quantities as are actually required and to exceed the estimated amount by a reasonable variance not to exceed 20 per centum.

§ 116.01-127 *Quantity required not known.* Where it is not possible to determine the quantity within a reasonable limit, a contract clause substan-

tially as follows should be inserted in the invitations:

The uncertain and varying needs of the Coast Guard make it impossible to determine the quantity or quantities of the articles and materials described herein that may be required during the contemplated period of the contract. Estimated quantities are stated for information only. It is mutually understood and agreed that the Government will order and the contractor will deliver the quantities of the kinds of articles or materials described in the specifications that in the judgment of the ordering officer may be required during the contract period, except as may be otherwise indicated. These supplies will be ordered from time to time during the life of the contract in such quantities for delivery in such forms and to such places provided for by the contract as the needs of the Coast Guard require. Proposals made with the proviso that the total deliveries will not exceed a certain specified quantity will be considered, but the right is reserved to reject any proposal which provides that the Government shall guarantee to take any definite quantity.

§ 116.01-128 Fresh water. The unit of quantity for fresh water in bulk should conform to the usual commercial practice in the locality where proposals are solicited. Where schedule of rates for water provide for a charge for meters in accordance with size, the size of the meters shall be indicated in the contract and on the payment invoices.

§ 116.01-129 Fuel oil. The unit of quantity for fuel oil will be the barrel of 42 gallons of 231 cubic inches at a standard temperature of 60° F. Corrections for variations in temperature will be made in accordance with table No. 2, circular No. 3-410 of the National Bureau of Standards.

§ 116.01-130 Gasoline and kerosene. The unit of quantity for gasoline and kerosene, and similar petroleum products, is the gallon.

§ 116.01-131 Liquids. In the case of liquids in bulk containers, such as barrels, drums, casks, etc., the unit shall be specified in gallons or quarts, etc., and the approximate quantity shall be shown, which shall be subject to adjustment upon delivery.

§ 116.01-132 Lumber. (a) The unit for the purchase of lumber is the board foot. Where it is the commercial practice to specify linear feet, as in the case of molding, beading, etc., the invitation shall be formulated accordingly, and the required dimensions and the number of pieces shall be accurately stated, except where random lengths are contemplated. Each item shall show clearly whether the board foot or the linear foot is the unit and whether the proposal is desired per thousand feet (per M), per hundred feet (per C), or per single foot (per foot). (b) The term "pinus ponderosa" shall be used in lieu of "California White Pine" to describe ponderosa lumber.

§ 116.01-133 Wood. The unit for wood is the standard cord of 128 cubic feet, but in localities where the so-called single cord (42½ cubic feet) is recognized in the trade, invitations shall clearly show which is intended.

§ 116.01-134 Coal. The unit of quantity for coal is the ton of 2,000 pounds.

The size of coal shall be specified by screen size rather than by name. In stipulating screen sizes consideration should be given to the sizes available at each point of delivery and the smallest or cheapest size shown by experience and trial to be effective shall be specified.

§ 116.01-135 Return or retention of containers. Invitations and contracts which involve the delivery of items in containers such as drums, carboys, cylinders, reels, etc., must contain a clause setting forth the ownership of the containers, and the applicable provisions for either the purchase or return of containers which are involved in the purchase. If the containers are the property of the Government that fact shall be clearly set forth in the contractual papers. If the containers are originally the property of the supplier, two alternatives are available: either to pay for the containers as a part of the purchase price, subject to allowance for the later return to the contractor; or to exclude the cost of the containers from the purchase price and arrange for later payment in the event the containers are not returned.

§ 116.01-136 Containers to remain the property of the contractor. When the purchase involves the use of containers which can be returned to the contractor within a reasonable length of time after delivery, and which the contractor desires to have returned, a clause substantially as follows shall be inserted in the invitation and in the contract:

Returnable containers. Containers (drums, carboys, cylinders, reels, tanks, etc.) incident to the delivery of the items shall be furnished by the contractor without cost to the Government and will be returned to him at point of delivery in good condition within _____ days after date of delivery. If the containers are not returned within that period, the contractor will accept settlement in full from the Government at the rate of \$_____ each, and the containers shall then become the property of the Government. The contractor further agrees to accept containers in good condition which have been paid for by the Government and which are returned within 12 months after the date of delivery at the expense of the Government, and to allow a credit of \$_____ for each container returned.

§ 116.01-137 Containers to become the property of the Government. When the purchase involves the furnishing of containers, the cost of which is to be included in the purchase price of the items furnished, the contract must provide a clause setting forth the fact that the containers were purchased by the Government and if a refund is payable for the later return of the containers, the conditions shall be set forth in the invitation and in the contract. A clause substantially as follows may be used:

Cost of containers. Containers (drums, carboys, cylinders, reels, tanks, etc.) incident to the delivery of the items shall be included in the cost of the items and the containers shall remain the property of the Government. If the containers are returned to the contractor's plant at Government expense, and in good condition within 12 months after the date of delivery to the Government, it is agreed that the contractor will allow the Government a credit of \$_____ for each con-

tainer so returned. Empty cylinders shall be delivered to: Name of contractor _____ Address of contractor's plant: _____

§ 116.01-138 Place of delivery—(a) General. Normally, contracts covering deliveries to known destinations shall require delivery f. o. b. destination (shipment to be made at the contractor's expense). However, when shipment involves one or more carload lots, information shall be requested from the Commandant (FS-2), prior to contracting, whether any special freight rate agreements are in effect which would make delivery f. o. b. contractor's shipping point beneficial to the Government. Supply contracts covering delivery of material to destination which cannot be determined at the time the contract is executed shall require delivery f. o. b. contractor's shipping point (shipment to destination at Government expense). Supply contracts covering delivery of material required to repair or replace Government property for which reimbursement has been obtained from persons responsible for the damage shall require delivery on an f. o. b. destination basis only. Where the invitation stipulates delivery at more than one place, the quantity shall be stated for each such point of delivery. Delivery and shipment clauses shall be inserted in the invitations and purchase documents.

(1) *Shipment at Government expense.* When the shipment is to be rail or freight transportation and the contractor is to bear the cost of placing supplies on board the cars or trucks at the shipping point nearest the contractor's plant, the following clause will be used:

Supplies shall be delivered f. o. b. contractor's shipping point for shipment on Government bill of lading to _____

(2) *Shipment at contractor's expense.* When shipment is to be made to destination at the expense of the contractor, the following clause will be used:

Supplies shall be delivered, all transportation charges paid, to destination.

(b) *Standard contract conditions.* Form CG-2557A-1, Additional General Provisions (Supply Contract), contains standard contract delivery conditions and shall be made a part of all supply contracts.

§ 116.01-139 Time of delivery. One of the following provisions covering time of delivery or performance will be included in invitations and purchase documents immediately following the reference as to required place and method of delivery:

- (a) Not later than _____
- (b) At the rate _____ per _____ beginning _____ and continuing at the rate of _____ until deliveries are completed.
- (c) Within _____ after date of contract.
- (d) Beginning _____ and completed by _____
- (e) Within the periods shown in the specifications.

(f) The contractor shall commence work within _____ calendar days after date of receipt of notice to proceed and complete the work within _____ calendar days after the date of receipt of notice to proceed.

§ 116.01-140 Where time is a controlling element; liquidated damages—(a)

General. Discretion must be used in setting the time for delivery or completion on a realistic basis considering possible delays in obtaining material or unexpected difficulties encountered in prosecuting the work due to weather or the site. Too short a time for performance causes disputes and poor contractual relations especially when a number of extensions are later requested for reasons which might have been foreseen and when a longer time would have well served the original need.

(b) **Supply contracts.** Where time of delivery or performance is to be a controlling element in the acceptance or rejection of proposals, the fact shall be stated in the invitations in order that all bidders may have an equal opportunity to offer the items or services within the time so specified. Where it is not so stated, this element cannot be considered in the making of awards. The following clause may be used. The scale in paragraph (c) (2) below will be used in determining the daily rate of liquidated damages for supply contracts.

Time required for delivery (completion) is important and will be considered when making award. Delivery (completion) is required

not later than (Insert Required Date). A liquidated damage clause assessing (Insert Rate per Day and Unit of Assessment) for each calendar day of delay in delivery (completion) will be included in the contract.

(c) **Construction contracts (SF-23)**—

(1) **Repairs to vessels.** A liquidated damage clause shall be inserted in all contracts for repairs to vessels. The clause applicable to vessel repair contracts is contained in Article 4 of Form CG-2557B, Conditions Applicable to Contracts for Repairs to Vessels, which shall be made a part of the invitation for bids and the resulting contract.

(2) **Other construction contracts.** A liquidated damage clause shall be inserted in all contracts for the construction and repair of real property in the form indicated in § 118.03-5 (k). In order to provide an equitable rate of liquidated damages to be incorporated in such contracts to protect the Government in the assessment thereof when necessary, the following scale is suggested. The assessment of liquidated damages at the rates suggested is left to the discretion of the contracting officer. However, higher rates of liquidated damages may be set for projects requiring early completion dates.

Amount of contract:	Liquidated damages
\$2,000 to \$10,000.....	\$10 per day.
\$10,000 to \$15,000.....	\$10 to \$15 per day.
\$15,000 to \$30,000.....	\$15 to \$30 per day.
\$30,000 to \$45,000.....	\$20 to \$25 per day.
\$45,000 to \$70,000.....	\$25 to \$35 per day.
\$70,000 to \$100,000.....	\$35 to \$40 per day.
\$100,000 to \$150,000.....	\$40 to \$45 per day.
\$150,000 to \$200,000.....	\$45 to \$50 per day.
\$200,000 to \$300,000.....	\$50 to \$60 per day.
\$300,000 to \$400,000.....	\$60 to \$65 per day.
\$400,000 to \$550,000.....	\$65 to \$80 per day.
\$550,000 to \$750,000.....	\$80 to \$100 per day.
\$750,000 and over.....	\$100 per day and over.

(3) **Extension of time.** Clause 5 (c) of Standard Form 23a, General Provisions (Construction Contracts) prescribes the acceptable causes for delay in contract completion. Any such delay beyond the contractor's performance time must be incorporated in a Change Order (Form CG-3473) immediately after the incident occurs in accordance with the provisions of Clause 5 (c), Standard Form 23a. Change orders granting an extension of time must be fully justified and the extenuating circumstances described in detail. In interpreting the word "unforeseeable" as used in the above clause, the Comptroller General of the United States, in his decision (B-73902), 27 Comp. Gen. 621, ruled:

It is to be understood at the outset that the application of excusable causes enumerated in the contract provision in question is dependent upon the factual situation present in a given case. That is to say, it is well established that the mere happening of an event or cause enumerated in the contract may not be regarded, *ipso facto*, as excusing the contractor, but there is first for consideration whether such event or cause was so abnormal, extraordinary or unusual, as to render it unforeseeable.

§ 116.01-141 **Item-by-item versus all-or-none award.** Where the invitation for bids covers a group of items, awards

are to be made item by item unless otherwise specified or unless it is clearly to the advantage of the Government to accept the lowest aggregate bid.

§ 116.01-142 **Repairs to vessels; lay days.** Invitations and contracts covering drydocking or hauling out of the water of vessels incident to repair work shall include an item for the cost of "Lay Days."

§ 116.01-143 **Use of nickel and nickel bearing alloys—(a) General.** The supply of nickel and nickel bearing alloys is controlled by direct allocation from the National Production Authority to manufacturers producing products requiring the use of nickel. Due to the critical supply of this material, its use is extremely restricted and allocations will be governed by the end use for which the items are required. National Production Authority Order M-14 prohibits the use of nickel for certain items except those manufactured for use on board vessels operated by the armed forces of the United States, including the Coast Guard.

(b) **Statement required in contracts and purchase orders.** Contracts awarded and purchase orders placed for items requiring the use of nickel should contain or be accompanied by a statement substantially as follows:

As the items being procured by this order require the use of nickel, the Coast Guard purchase order number and date, together with the end use specified below should be included in any order placed by your firm, or by your subcontractors, in obtaining material and supplies to complete this Coast Guard order.

The end use is as follows: Transmitters (or other item) for military use on board a Coast Guard cutter.

§ 116.01-144 **Construction and repair specifications—(a) General.** Since construction and repair contracts embrace the furnishing of labor, materials and/or equipment, specifications shall be written in a complete and clear manner. In addition to the provisions of Forms CG-2557B (Conditions Applicable to Contracts for Repairs to Vessels), CG-2557C (General Conditions Applicable to Contracts for Construction and/or Repairs to Shore Structures), and SF-23a (General Provisions—Construction Contracts), the outline should include, but is not restricted to, the following:

(1) Designation of contracting officer and requirement for his written authorization of all changes to contract terms. (See §§ 116.01-24 and 116.01-25.)

(2) Scope of the work—

(i) Complete description of vessel or real property covered by contract and work to be done;

(ii) Designated inspecting officer and inspection instructions;

(iii) Requirement for written authorization(s) to proceed with work;

(iv) Requirement for contractor to make written request(s) for extension(s) of time for completion;

(v) Special instructions.

(3) Standard and special contract clauses.

(4) Itemization of labor, materials and/or equipment to be furnished by contractor.

(5) Statement of materials and/or equipment to be furnished by Government.

(6) Detailed itemization of work to be performed—

(i) Definite items;

(ii) Indefinite items.

(7) Temporary services to be provided by the contractor, such as light and power, water, steam, garbage disposal, telephone service, etc.

(8) Drawings, plans, sketches, etc.

(9) Bonding requirements.

(b) **Terms, conditions, and provisions in recurring invitations.** Where a large volume of invitations are issued on similar, recurring contracts, standing terms, conditions, etc., not contained in regular printed forms should be set up on locally prepared forms in quantities peculiar to the requirements of each contracting office in order to eliminate unnecessary paper work and to expedite processing invitations and/or contracts. However, terms, conditions, and provisions inconsistent with those prescribed herein or in current supplementary directives may not be used unless authorized by the Commandant (FS-1).

§ 116.01-145 **Burial contracts—(a) General.** It shall be the policy of the Coast Guard to utilize burial contracts of the Department of Defense, or other Government departments or agencies,

wherever practicable. When such contracts are not available, procurement of burial services (including materials other than uniform clothing and funeral flags) will be made by competitive bidding or negotiation, as circumstances warrant. Uniform clothing for burial purposes shall be obtained from Coast Guard clothing officers or procured from Navy clothing stores, unless otherwise authorized by the Commandant; funeral flags will be obtained in accordance with § 116.01-164.

(b) *Specifications*—(1) *Materials and services*. The following items apply to standard burial contracts. Items not required shall be omitted from the materials and services listed on SF-33 (Invitation, Bid and Award) or Form CG-2982 (Request for Quotation). Additional items required may be added to the above forms, provided procurement is authorized. The specifications indicated are contained in the Department of Defense Specifications for Uniform Burial Contract. (See subparagraph (2) of this paragraph.)

- (i) For complete embalming service as per Specification 1.
- (ii) Funeral service as per Specification 2.
- (iii) For Type I Casket, burial, metal, with inner-seal as per Specification 3.
- (iv) For Type II Casket, burial, metal, without inner-seal as per Specification 3.
- (v) For shipping case of proper size to contain Type I or Type II Casket, metal, burial as per Specification 4.
- (vi) For transportation of remains in contractor's hearse to any local cemetery within a radius of _____ miles of the _____

(Name of installation)

- (vii) For delivery of remains in contractor's hearse, ambulance or other suitable closed conveyance to common carrier terminal within a radius of _____ miles of the _____

(Name of installation)

- (viii) For passenger car for members of immediate family, where required, to a local cemetery for interment, or to common carrier terminal when remains are to be shipped to final destination.

(2) *Department of Defense specifications for uniform burial contract*. These specifications shall be used by Coast Guard contracting officers in the procurement of burial materials and services.

SPECIAL PROCUREMENT INSTRUCTIONS

§ 116.01-155 *Procurement of office labor-saving devices*. (a) Direct procurement of office labor-saving devices from any commercial source without prior approval of the Commandant (FS) is prohibited.

(b) Field units requiring office labor-saving devices, other than replacement typewriters and adding and calculating machines, will submit to the Commandant (FB), via official channels, a requisition (Form CG-2556) fully describing the equipment desired and utilizing the stock numbers as contained in the current Federal Supply Schedule, if available.

(c) Replacement of typewriters and adding and calculating machines will be in accordance with regulations prescribed by the General Services Administration.

(d) Procedures covering the exchange of material are set forth in §§ 116.01-90 through 116.01-92 and § 118.02-19 of this chapter.

(e) Requisitions covering replacement equipment will describe fully the equipment to be replaced. Requisitions covering additional equipment will be supported by a letter justifying the need for the additional equipment.

(f) Requests for electric typewriters must be accompanied by a complete and detailed justification.

(g) Upon receipt of the newly procured devices, the Commandant (FS) shall be furnished with a complete description thereof and the unit to which they will be assigned.

§ 116.01-156 *Procurement of electric fans*. (a) Until such time as term contracts are executed for electric fans (meaning any propeller type fan designed for desk, pedestal, wall bracket, ceiling, or portable window mounting electric fan) under Federal Supply Schedules, the Federal Supply Service, General Services Administration will procure all new electric fans required by the Coast Guard, except those for shipboard use.

(b) District offices and Headquarters units are authorized to submit purchase orders (Form CG-2557) for electric fans, if not in excess of authorized allowances, directly to the Federal Supply Service, General Services Administration, 7th and D Streets SW., Washington 25, D. C.

§ 116.01-157 *Procurement of refrigerators*. (a) The Federal Supply Service, General Services Administration will procure all new refrigerators required for use by the Coast Guard, except refrigerators for shipboard use or "walk-in" or "reefer" type refrigerators. Refrigerators to be procured shall include all portable commercial and household refrigerators and low temperature storage cabinets, with self-contained electric or gas units, in conformance with General Services Administration Specification No. 811, dated 28 April 1950, or to applicable specification developed by the requisitioning activity.

(b) District offices and Headquarters units are authorized to submit purchase orders (Form CG-2557) for refrigerators, if not in excess of authorized allowances, directly to the Federal Supply Service, General Services Administration, 219 South Clark Street, U. S. Court House, Room 528, Chicago 28, Illinois.

§ 116.01-158 *Procurement of electric water coolers*. (a) The Federal Supply Service, General Services Administration will procure all new electric water coolers required by the Coast Guard, except those for shipboard use. Water coolers to be procured shall include the following types and sizes listed in Federal Specification 00-C-566B dated 31 July 1947:

Bubbler style (type I, air-cooled condenser; type II, water-cooled condenser), sizes 5, 10, and 20.

Cafeteria style (type III, air-cooled condenser; type IV, water-cooled condenser), sizes 20 and 30.

Remote style (type V, water-cooled condenser), sizes 10 and 20.

Bottle style (type VI, air-cooled condenser), size 3.

(b) District offices and Headquarters units are authorized to submit purchase orders (Form CG-2557) for electric water coolers, if not in excess of authorized allowances, directly to the Federal Supply Service, General Services Administration, 219 South Clark Street, U. S. Court House, Room 528, Chicago 28, Illinois.

§ 116.01-159 *Substitution of wood for steel*. During any period in which steel is in short supply, all requests for procurement of such items as desks, filing cabinets, tables, etc., shall be screened for possible substitution of wood in lieu of steel.

§ 116.01-160 *Purchase of gasoline and lubricating oil by credit cards*. (a) District Commanders may authorize the purchase of gasoline and lubricating oil for service station delivery. Further, such purchases may be accomplished through the use of a credit card as provided for in the Federal Supply Schedule under "General Provision for Service Station Deliveries" Classes 7 through 14, applicable to the GSA region in which the district is located.

(b) The issue of credit cards by District Commanders will be restricted to:

(1) Units where Coast Guard refueling is not available for vehicles in their usual operations.

(2) Units which have vehicles that operate away from unit in areas where Coast Guard refueling is not available.

(c) In using credit cards the following important directions must be followed:

(1) When buying gasoline, procure "regular" gasoline only.

(2) Make sure vehicle Standard Identification Tag (license plate) number is entered on sales slip.

(3) After signing sales slip, obtain a copy from the supplier and mail this copy of the sales slip to the District Commander (f). For prolonged trips, it is suggested that addressed envelopes be provided for this purpose.

(d) The Commanding Officer, Officer in Charge, or individual to whom credit cards are issued is responsible for the proper use of these cards. Some credit cards have a block or space provided for insertion of the license plate number. On transfer of a vehicle, cards of this type will be transferred with the vehicle, while cards without license plate numbers will be retained for use with the replacement vehicle.

(e) If at any time conditions change to the extent that any Commanding Officer or Officer in Charge believes he should have credit cards for effective operation of his unit, he may request the credit cards from the District Commander (f), stating the number of cards desired, the oil companies preferred, and the details as to why the cards are necessary. Likewise any Commanding Officer or Officer in Charge who has excessive cards at any time may return them to the District Commander (f).

(f) Group Commanders, who do not need credit cards for operations described above in paragraph (b) (1) and (2) of this section may hold reserve credit cards for disaster relief or other emergency work which may require the

use of vehicles away from the Group area. Group Commanders who have credit cards for regular vehicle operations may use these in connection with any vehicle in the group dispatched in subject emergency work.

(g) If Purchase-Invoices (Form CG-2974) are used as a medium to post cost data for "Report of Operation of Vehicle" (CG-2956), this use of the invoice book may be continued.

(h) Tax Exemption Certificates, Standard Form 1094, will be issued by the paying officer when contractor's invoices are processed for payment, as prescribed in §§ 116.01-104 through 116.01-114.

§ 116.01-161 *Procurement of paint.* The procurement of paint shall be restricted to regular Coast Guard or Navy activities where thorough inspection is assured. Except as otherwise authorized by the Commandant (FS), commercial procurement of paint items peculiar to Coast Guard shall be initiated only by the Supply Center, Jersey City, N. J. With the exception of those items covered by the Paint and Color Manual (CG-263) requiring Headquarters' approval, the procurement of all paints made commercially must be supported by a statement of the necessity therefor or a reference to the authority for the procurement and a copy of the procurement document shall be forwarded to the Commandant (FS).

§ 116.01-162 *Procurement of manila rope.* All Coast Guard units, including vessels with supply officers attached, shall requisition their requirements for manila rope $\frac{3}{4}$ " circumference and larger from Coast Guard supply units. Commercial procurement of manila rope $\frac{3}{4}$ " circumference and larger shall be initiated by the Supply Centers in accordance with current Coast Guard specifications. Procurement of manila rope $\frac{3}{4}$ " and larger from other sources, except to meet an immediate requirement that cannot be satisfied from Coast Guard supply units, is prohibited. When procurement action from other than Coast Guard supply units is necessary, a copy of the purchase document shall be forwarded to the Commandant (FS) endorsed by the procurement officer to indicate the nature of the requirement and the fact that procurement could not be made from Coast Guard supply sources within the time required.

§ 116.01-163 *Procurement of morale and recreation equipment—(a) Allotment of funds.* Funds will be allotted to Districts and individual Headquarters' units under subhead 55 to the maximum extent possible for the procurement of morale and recreation equipment. Funds for the procurement of morale and recreation equipment for field units will not be maintained at Headquarters except as necessary to procure the items listed in paragraph (b) of this section.

(b) *Procurement restricted to headquarters.* The following items may be requisitioned from the Commandant (PS) without charge to field allotments:

- (1) Shotgun shells.
- (2) Motion picture projectors.
- (3) Pool tables.
- (4) Libraries.

(c) *Procurement procedure.* The items listed in paragraph (b) of this section, except shotgun ammunition, should be requested from the Commandant (PS) as needs of the field units indicate. Prior to 1 June each year, District Commanders and Commanding Officers of Headquarters units shall furnish the following information to the Commandant (PS) in letter form:

(1) Estimated amount of shotgun ammunition required by the District or Headquarters unit for the following fiscal year indicating amount of each gauge and shot size desired.

(2) Unit to which shipment is to be made for storage pending distribution.

Shotgun shells required will be procured by Headquarters, insofar as available funds will permit, as soon as practicable after the beginning of the fiscal year for which estimates are submitted and shipped to designated units.

§ 116.01-164 *Funeral flags.* Commanding officers and officers in charge are authorized to issue the national flag (U. S. National Ensign #8, cotton) to accompany all bodies of Coast Guard personnel forwarded or delivered to the next of kin or relatives for interment. Procurement of such flags shall be made from regular sources of supply where practicable. Specific procurement of funeral flags shall be charged to Subhead 40 (Administrative Maintenance) of the appropriation "Operating Expenses, Coast Guard."

SUBPART 116.02—PROCUREMENT BY FORMAL ADVERTISING GENERAL

§ 116.02-1 *Meaning of formal advertising.* As used in this part, formal advertising means that method of procurement following the procedures prescribed with respect to competitive bids and awards, which involves the use of standard invitation for bid forms containing specifications and conditions applicable to the proposed contract, instructions to bidders, and requires the submission of sealed bids for public opening at a given time and date.

§ 116.02-2 *Use of formal advertising.* (a) In accordance with the basic policies set forth in the act, procurement of supplies and services shall generally be effected by formal advertising. Bids shall be solicited from such sources as are deemed necessary by the contracting officer to assure full and free competition consistent with the procurement of the required supplies or services.

(b) Current lists of bidders shall be maintained. Requests for inclusion on such lists shall receive prompt and courteous attention.

(c) Procurements classified as confidential or higher shall not be effected by formal advertising, except when the Commandant determines this method to be in the interest of the Government.

§ 116.02-3 *General requirements for formal advertising.* No contract shall be entered into as a result of formal advertising unless and until all of the following requirements have been satisfied:

(a) Bids have been solicited as prescribed herein.

(b) Bids have been submitted in accordance with the requirements herein.

(c) All applicable requirements of law, of the Comptroller Manual, and current supplementary directives affecting the proposed procurement have been met.

(d) Any clearance or approval prescribed by the Comptroller Manual, and/or current supplementary directives affecting the proposed procurement have been obtained.

(e) Award has been made to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered.

FORMS AND FORM PREPARATION

§ 116.02-10 *Preparation of invitation for bid forms.* Every invitation for bids should contain substantially the following information and any other information required by supplemental directives current at the time of the proposed procurement:

(a) Invitation number (by fiscal year).

(b) Name and address of issuing activity.

(c) Date of issuance.

(d) Date, hour, and place of opening.

(e) No. of pages and an adequate description of schedules, drawings, etc., making up the invitation.

(f) Purchase authority, appropriation, and accounting data.

(g) Discount provisions.

(h) Quantity of supplies or services to be furnished under each item, and any provisions for quantity variation.

(i) Description of supplies or services to be furnished under each item, complete with adequate specifications.

(j) Whenever specifications require prior testing and qualification of products, the right to reject bids offering products which do not meet this requirement must be expressly reserved.

(k) Time, place, and method of delivery.

(l) Requirement that bids shall be on an F. O. B. destination basis except where the total weight of shipment or partial shipment exceeds 20,000 pounds or requires the use of one or more freight cars, unless circumstances justify deviation from this policy.

(m) Permission, if any, to submit telegraphic bids.

(n) Permission, if any, to submit alternative bids, including alternative materials or designs.

(o) Requirement, in the case of advertising for construction of vessels, that the bidder file with his bid the estimates on which the bid is based.

(p) Preservation, packaging, packing, and marking requirements, if any.

(q) Place, method, and conditions of inspection.

(r) Bond and surety requirements, if any.

(s) Special provisions relating to such matters as Government-furnished property, progress payments, patent licenses, liquidated damages, profit limitations, etc., provided that any such special provisions are authorized.

(t) A statement to the effect that the successful bidder will be notified of contract award within ---- calendar days

after date of opening of bids. (See § 116.02-113.)

(u) General contract provisions or conditions required by law.

§ 116.02-11 Prescribed invitation for bid forms. (a) Standard Form 33 (Invitation, Bid and Award), and Standard Form 36 (Continuation Sheet), shall be used to solicit bids for:

(1) Supplies or services.
(2) Minor construction and repair of real property (as defined in § 118.03-3 (a) of this chapter and vessels, provided the contract does not exceed \$2,000 and does not require bonds.

(3) Construction and repair of aircraft.

(4) Construction and repair of aids to navigation (as distinguished from real property and vessels).

(5) Acquisition of land, buildings, etc.
(6) Leases of real property.

(b) Standard Form 20. Standard Form 20 (Invitation for Bids—Construction Contract), accompanied by Standard Form 21 (Bid Form—Construction Contract), shall be used to solicit bids for construction and repairs to the following for amounts of \$2,000 or more, or a lesser amount which requires the use of bonds.

(1) Vessels.
(2) Shore structures.

§ 116.02-12 Conditions applicable to invitations for bids—(a) General. Invitations for bids shall specify all conditions which will subsequently form part of the contract. The applicable conditions shall form part of the schedule or be incorporated by appropriate reference (i. e., "Subject to the conditions of Form _____ for Articles _____ of Form _____ attached hereto and forming a part of this invitation."). The following forms are available for this purpose:

(1) Standard Form 22, Instructions to Bidders (Construction Contract).

(2) Standard Form 23a, General Provisions (Construction Contract).

(3) Standard Form 32, General Provisions (Supply Contract).

(4) Standard Form 42, Standard Government Instructions to Bidders (Coal).

(5) Standard Form 43, Standard Government Purchase Conditions (Coal).

(6) Form CG-2557A, Additional General Provisions (Supply Contract).

(7) Form CG-2557A-1, Additional General Provisions (Supply Contract).

(8) Form CG-2557B, Conditions Applicable to Contracts for Repairs to Vessels.

(9) Form CG-2557C, General Conditions Applicable to Contracts for Construction and/or Repair of Shore Facilities.

(10) Form CG-2557C-1, Additional Contract Conditions—Construction Contract ("Kickback" Regulations).

(b) When execution of separate contract required. Invitations for bids which require the successful bidder to execute a separate award type (or "long form") contract shall contain a statement as follows:

The successful bidder will be required to execute a contract on Standard Form No. _____ a copy of which is appended hereto for information.

§ 116.02-13 Eliminating unnecessary distribution of conditions. (a) To facili-

tate bidding by concerns regularly doing business with the Coast Guard, and to eliminate unnecessary distribution of the contract condition forms listed in Sec. 116.02-12, the forms may be incorporated by reference in the invitation rather than attached thereto upon each new procurement. This may be done by the use of the following clause in the schedule or continuation sheet:

Standard Form(s) _____ and Coast Guard Form(s) _____ are incorporated herein by reference and made a part hereof. Copies of these forms have been furnished previously; additional copies are available on request. Failure to obtain the contract conditions referred to herein will not relieve the successful bidder of any contractual obligation.

(b) In following the foregoing procedure, it is necessary that the contracting officer (1) distribute copies of the forms to all prospective bidders on the mailing list requesting that they be retained for future reference, (2) provide additional copies promptly to such bidders upon request, and (3) strike out the word "Attached" under the heading "Invitation for Bids" on Standard Form 33.

(c) Where it is desired that the contract condition forms accompany the invitation when it is mailed to prospective bidders, a single copy of each contract condition form should be provided for the bidder in lieu of attaching several copies with the basic invitation. Appropriate reference to the pertinent conditions shall be made in the schedule or continuation sheet.

§ 116.02-14 Copies of proposed construction contracts required by headquarters. Two copies of all invitations for bids involving construction contracts to be executed on Standard Form 23 (Construction Contract) and two copies of the proposed contract, complete with plans and specifications, shall be forwarded to the Commandant (FS-1) at the time the invitations for bids are distributed.

§ 116.02-15 Methods of soliciting bids.

(a) Manufacturers and regular dealers, who can establish or have established their fitness and ability to fulfill contract requirements, will be placed on mailing lists for bids or notices in advance of bids. Bids shall be solicited by the methods prescribed in subparagraphs (1) and (2) of this paragraph and by the methods prescribed in subparagraphs (3) and (4) of this paragraph to the extent deemed necessary by the contracting officer in order to assure full and free competition. Synopses of invitations for bids shall be prepared and distributed as prescribed by § 116.01-74.

(1) Mailing or delivering to prospective bidders.

(2) Displaying in a public place, such as a post office, a purchasing office, or some other appropriate public place.

(3) Free publication in trade journals or magazines whose subscribers are manufacturers of or dealers in the supplies or services being procured.

(4) Free publication in newspapers.

(b) No paid advertisement for bids shall be inserted in any newspaper, trade journal, or other publication without the prior approval of the Commandant (FS).

§ 116.02-16 Establishing competition. (a) Bids shall be solicited from three or more responsible bidders when practicable to do so. In addition, a copy of the invitation, or a description thereof, shall be posted in a public place, inviting a general participation in the competition.

(b) The solicitation of bids is not restricted to the immediate locality. If, after consideration of time and cost of transportation, a more advantageous price may be obtained elsewhere, invitations should be distributed accordingly. Invitations should be posted and circulated not only at the place of solicitation and at the site of the proposed work, but should be given wide circulation generally in order that the Government may obtain the most economical procurement available.

(c) Competition shall not be defeated by grouping diverse items on the same invitation, resulting in the receipt of a limited number of bids.

(d) Invitations for bids shall allow sufficient time for interested bidders to prepare and submit their bids. (See § 116.02-73.)

(e) An invitation sent to one bidder and a notice posted in one public place does not constitute sufficient advertising for supplies or services in the absence of facts justifying the limited distribution.

(f) The fact that an article is patented, copyrighted, manufactured or distributed exclusively by a limited number of sources is not an acceptable reason for omitting advertising.

(g) Competition shall not be dispensed with to match equipment on hand, inasmuch as numerous firms may be in a position to furnish the required item or a satisfactory substitute.

§ 116.02-17 Retention of records.

Each procurement transaction file shall be complete and copies of all documents, properly authenticated, will be included therein. Procurement transaction files will be maintained in such a manner as to present a complete résumé of the transaction for historical record or such other purpose as may be required. Invitations for bids and abstracts of bids will be retained for at least six years after date of award, unless retired sooner under proper disposal authority.

§ 116.02-18 Amendments to invitations for bids.

(a) Amendments to invitations for bids must be distributed to all recipients of the invitation, and such amendments shall provide that bidders are to sign and return the amendments prior to the opening of the bids. The date set for opening the bids shall be postponed when necessary to afford bidders sufficient time to return the amendments.

(b) Amendments, if issued, will refer to the number, date of issue, and opening date of the original invitation, will clearly indicate the nature of the changes made therein, and will be numbered serially as issued.

DISTRIBUTION OF BIDS

§ 116.02-40 General. The advertisement for bids shall be a sufficient time previous to the purchase or contract, and specifications and invitations for bids shall permit such full and free competi-

tion as is consistent with the procurement of types of supplies and services necessary to meet the requirements specified in this manual. The invitations may not contain restrictions or conditions, not required in the public interest, which tend to limit competition. Invitations and specifications must be such as to permit competitors to compete on a common basis.

§ 116.02-41 Manner of solicitation. Normally, the statutory requirements as to advertising are satisfied by posting a copy of the notice in an appropriate public place and by mailing or delivering invitations for bids to a fairly representative selection of prospective bidders. Care must be exercised to provide adequate advertisement to insure full and free competition by sending invitations to a sufficient number of prospective bidders. Advertisements posted in public places should always conform with the invitation circulated among prospective bidders. The methods of solicitation of bids are detailed in § 116.02-15.

§ 116.02-42 Qualification of bidders. The question of a bidder's qualification to do the work, or to furnish supplies advertised for in the invitation for bids, is primarily for consideration in making the award, but also may arise in connection with the solicitation of bids. For projects of a special nature, the invitation may state certain minimum qualifications which a bidder must possess in order to be considered in making the award, although a showing of such qualifications may not be made a condition of his right to submit a bid. Except for bidders officially debarred because of the violation of certain statutes, it is improper to limit competition to bidders approved in advance.

§ 116.02-43 Restrictions or conditions in invitations. Invitations to prospective bidders should not impose conditions or restrictions which tend to limit competition unless required by statute or otherwise permitted in the public interest.

§ 116.02-44 Definition of product. As a general rule, the specifications must define the product to be contracted for in terms sufficiently definite to assure that every bid made in compliance therewith will be for substantially the same product. This is necessary to enable all bidders to compete on a common basis and to assure the Government the lowest price obtainable. This rule does not preclude a request in the invitation for bids that alternate bids be submitted on the bases of several different qualities of material. Specifications should be drawn with regard to the actual needs of the service, and should not reflect the preference of a purchasing officer or contracting officer for a particular make or type of article. See Subpart 116.01 for detailed instructions in the use of specifications.

§ 116.02-45 Contractors indebted to the Government. (a) Each department of the Government has a continuing responsibility for the collection of debts due the United States of which it has knowledge regardless of the department or agency within which the indebted-

ness arises. To facilitate the execution of this policy, the Department of the Army prepares for all departments and agencies a list of indebted contractors entitled "Hold-Up List." Authorized certifying officers settling vouchers in payment of Coast Guard contracts will maintain an up-to-date copy of the above list and shall afford full cooperation in the collection of amounts due the United States.

(b) When an authorized certifying officer has knowledge that a debtor contractor (other than a common carrier) has a contract with another agency, request will be made upon such agency, via the Commandant (FS), to withhold from the contractor and remit to the requesting officer the amount sufficient to cover the indebtedness. Upon failure to effect collection within a reasonable period, the indebtedness, consistent with existing procedures but not less than \$25, will be promptly reported to the General Accounting Office, via the Commandant (FS), with a complete statement of the facts involved. The Commandant (FS) will furnish the name of the indebted contractor to the Department of the Army for inclusion on the "Hold-Up List," together with information that the indebtedness has been referred to the General Accounting Office.

(c) When the name of the indebted contractor has been placed on the "Hold-Up List," all checks drawn to liquidate the indebtedness will be transmitted through the Office Chief of Finance, Department of the Army, Gravelly Point, Washington, D. C., to the department to which the amount is due or to the General Accounting Office if report of the indebtedness has been made pursuant to paragraph (b) of this section. Copies of the transmittal letters shall be furnished the Commandant (FS). All such checks shall be drawn payable to the "Payee or Treasurer of the United States" and shall be accompanied by a statement sufficient to identify the indebtedness against which it is to be applied. If the set-off is to cover the indebtedness of more than one department or agency, separate checks will be drawn to cover each such indebtedness, or in the event the vouchers presented exceed the amount of the debt an additional check will be drawn in favor of the payee for the balance due to be forwarded directly to the payee. Advice of such collection action will be furnished the contractor-debtor by the officer making the deduction.

§ 116.02-46 Bidders' mailing lists—
(a) *General—*(1) *When required.* The contracting officer will establish and maintain a bidders' mailing list, as described below, at those units where procurement or sales transactions are solicited by advertising. This list may be utilized for soliciting negotiated transactions when the contracting officer deems that the number of prospective suppliers is sufficient to guarantee procurement by competitive negotiation.

(2) *Format of list.* The list will be comprised of two files set up in the following manner:

(i) *Bidders' index file.* An alphabetical arrangement, according to bidder's

name, of all Bidder's Mailing List Applications (Standard Form 129) received from prospective suppliers under paragraph 2 below.

(ii) *Commodity index file.* An arrangement of 4 x 6" or 5 x 8" cards (with one-third cut) in alphabetical order according to tabs, to commodity group. On the card will be listed items usually included on the same invitation for the commodity group appearing on the tab. When appropriate for larger groups, such as electrical, hardware, and machinery supplies, untapped index cards listing subdivisions of the commodity group will be prepared and filed behind the tabbed card. The name and address of every prospective supplier included in the bidders index file will appear on the commodity index card listing items in which the supplier has indicated interest.

(b) *Method of compiling lists—*(1) *General.* The establishment of new bidders' mailing lists shall be accomplished by soliciting applications on SF-129 (Bidder's Mailing List Application) from suppliers believed qualified to fill Coast Guard requirements. Procurement officers will furnish prospective bidders such additional instructions for the preparation and transmittal of SF-129 as may be required to insure its proper completion and filing and, where practicable, a list of items or groups of items normally procured on a recurring basis. All suppliers who appear from the bidders' mailing list applications (SF-129), or other available information, to be qualified and eligible to fill the unit's procurement needs will be placed on the bidders' mailing list.

(2) *Procurement of application forms.* Supplies of SF-129 (Bidder's Mailing List Application) may be obtained from the appropriate regional office of the General Services Administration.

(c) *Removal of names from bidders' mailing list—*(1) *Failure to respond to invitation for bids.* Where a supplier fails to respond to two consecutive invitations for bids (or pre-invitation notices), his name shall be removed from the bidders' mailing list without notice to the supplier, but only for the item or items involved in the invitation (or pre-invitation notice), except that, in individual cases only, bidders thus failing to respond may be retained on a bidders' mailing list if such retention is determined to be in the best interests of the Government. For the purpose of this subparagraph, a response to an invitation for bids (or pre-invitation notice) shall be understood to include both actual bids and written requests from non-bidding suppliers for retention on the bidders' mailing list.

(2) *Debarred contractors.* The names of suppliers who have been debarred from entering into Government contracts, or otherwise determined to be ineligible to receive an award of a Government contract, shall be removed from the bidders' mailing list of the unit to the extent required by such debarment or determination of ineligibility.

(3) *Periodic review.* Procurement officers shall provide for a periodic review of bidders' mailing lists to insure con-

formance with subparagraphs (1) and (2) of this paragraph.

(4) *Reinstatement of suppliers on bidders' mailing lists.* Suppliers whose names have been removed from bidders' mailing lists may be reinstated upon their request and, where required, by filing a new application on SF-129, in accordance with the procedures of the unit; provided that no supplier who has been debarred shall be reinstated until after termination of the period of his debarment.

(d) *Utilization of bidders' mailing lists—(1) General.* The degree of use of the entire mailing list in any procurement shall be as broad as is compatible with efficiency and economy in securing adequate competition, as required by law. In addition to the operation of bidders' mailing lists, the available facilities of the Department of Commerce for the dissemination of synopses of proposed purchases, as covered by § 116.01-74, shall be utilized to make more widely available to all business enterprises (particularly small business concerns and concerns in surplus labor areas) public notice of procurement information sufficiently in advance of bid closing date to insure the broadest participation of qualified suppliers.

(2) *Economy of operation.* The administrative cost of each purchase in relation to the dollar value of the articles or services being procured should be considered in order to achieve maximum economy in procurement. For example, on items having local supply characteristics (such as sand and gravel), bids should be solicited only in the geographic area where performance can be expected.

(3) *Excessively long bidders' mailing lists.* When the number of names on a bidders' mailing list is deemed to be excessive in relation to a specific procurement, the following methods, in addition to such others as the unit concerned may determine to be advantageous in this respect, may be employed to provide a reduced list of names for use in making the specific procurement:

(i) *Rotation of mailing lists.* Bidders' mailing lists may be rotated; that is, if there is an excessive number of names on the list for a specific article or service, the procurement officer may mail invitations to the first 20 percent of names on the list. When the same item is needed again, invitations may be sent to the second 20 percent, etc. This system will require considerable judgment on the part of the purchasing officer as to the size of transactions where rotation is justifiable, the interests of small business concerns, the existence of surplus labor areas, the adequacy of the curtailed list, and the best interests of the Government. This system does not preclude consideration of bids received from bidders other than those to whom invitations were originally sent.

(ii) *Pre-invitation notice.* In lieu of forwarding complete bid sets in the first instance, a postcard or other suitable notice containing a condensation of essential information from the invitation for bids approved for issuance, and instructions for obtaining bid sets, may be mailed to suppliers on the established list. Upon receipt of the reply to such

notice within the specified time, bid sets should be forwarded to those persons or concerns showing an interest in the proposals. Such notices must (a) be sufficiently informative to provide the supplier an intelligent basis for judging whether he has an interest in the procurement, and (b) provide the means for indicating the suppliers' desire to be retained on the bidders' mailing list. Also, it is of utmost importance that the closing date for receipt of bids be sufficiently subsequent to the mailing of such notice to assure adequate time for submission of bids. This device is particularly adaptable to major purchasing units where lengthy invitations for bids and long bidders' mailing lists are common.

§ 116.02-47 *Debarment of bidders—(a) General—(1) Scope.* This paragraph prescribes policies and procedures relating to the debarment of bidders for any cause and ineligibility of bidders under Section 1 (a) of the Walsh-Healey Public Contracts Act (41 U. S. C. 35a). It is applicable to both advertised and negotiated procurement.

(2) *Security classification.* Correspondence relating to debarred or ineligible firms or individuals and lists of such firms or individuals shall be classified.

(3) *Administrative and Buy American Act debarments.* When the public interests warrant the administrative debarment of a firm or individual for any of the causes listed in paragraph (e) of this section, or for violation of section 3 (a) of the Buy American Act (Public Law 428, 72d Congress, 47 Stat. 1520; 41 U. S. C. 10-b (b)), a detailed report shall be submitted to the Commandant (FS). The Commandant will review the evidence submitted, make the necessary debarment determination, and advise all Coast Guard contracting officers and other agencies concerned of any debarment made as a result of such determination.

(b) *Lists of debarred or ineligible bidders—(1) Interchange of debarment information—(i) General Services Administration.* The General Services Administration is charged by GSA Regulation 1-II-207.07 with compiling from notifications of debarments furnished by the military departments and executive agencies a combined list of such debarments, including the basis of action, and distributing a copy of such lists to all executive agencies including the military departments. In general application, this listing, known as the General Services Administration Refer List, will be for information only and is not intended to take the place of, or be in addition to, the lists maintained by the various agencies. The Commandant (FS) will notify the General Services Administration of debarment actions taken by the Coast Guard.

(ii) *Department of Labor.* The Wage and Hour and Public Contract Divisions of the Department of Labor disseminate listings of ineligible bidders under section 1 (a) of the Walsh-Healey Public Contracts Act. Listings of ineligible bidders under section 1 (a) of the above act and the extent of ineligibility are published to contracting and purchasing of-

fices of the federal government by the Department of Labor in the form of circular letters and supplements thereto.

(iii) *Navy.* The Chief of Naval Material, in behalf of the Department of the Navy, exchanges listings of debarred bidders with the Departments of the Army and Air Force and the General Services Administration and, to the extent deemed appropriate, periodically publishes listings received from such agencies, together with lists promulgated by the Department of Labor. The publication NAVEXOS P-1205, Consolidated List of Debarred, Ineligible and Suspended Contractors, contains the names of firms and individuals who have been debarred, declared ineligible, or suspended and the extent of the restriction imposed with respect to awarding contracts to such firms or individuals.

(iv) *Coast Guard.* The Chief, Procurement Section at Headquarters, in behalf of the Commandant, maintains a master file of all firms or individuals debarred by the Coast Guard. Notification of such debarments will be made to the General Services Administration by the Commandant (FS) pursuant to GSA Regulation 1-II-207.06. Likewise, replies to direct inquiries from other agencies concerning any debarment case processed by the Coast Guard will be made by the Commandant (FS).

(2) *Lists to be maintained—(i) General.* Due to its extensive coverage, Navy publication NAVEXOS P-1205 shall be used as the official list of debarred, ineligible and suspended contractors by Coast Guard contracting officers. Supplemental lists will be promulgated by the Commandant, when necessary, to furnish information regarding firms or individuals debarred by the Coast Guard and debarments made by other agencies which are not included in NAVEXOS P-1205, but which are to be observed by Coast Guard contracting officers. In using NAVEXOS P-1205, requests for administrative determinations shall be addressed to the Commandant (FS) in lieu of the Chief of Naval Material. (See § 116.02-46 (c) (2) regarding the use of debarred bidders' lists in connection with bidders' mailing lists.)

(ii) *Headquarters.* The following lists of debarred and ineligible bidders shall be maintained by the Chief, Procurement Section at Headquarters. Requests for information concerning these lists originated by field and Headquarters' units shall be addressed to the Commandant (FS).

- A. NAVEXOS P-1205.
- B. GSA Refer List.
- C. Department of Labor circular letters.
- D. Master file of Coast Guard debarment actions.

(iii) *Other units.* The following lists of debarred and ineligible bidders shall be maintained by contracting officers at those units listed in § 116.01-6 (c) (1) through (7), inclusive.

- A. NAVEXOS P-1205.
- B. Coast Guard supplements to NAVEXOS P-1205 (see subparagraph (2) (i) above).

(c) *Bases for debarment and ineligible list entry.* Firms or individuals are entered on the debarment and ineligible

lists indicated in paragraph (b) of this section on the following bases:

(1) *Section 3, Walsh-Healey Public Contracts Act.* Those listed by the Comptroller General in accordance with the provisions of section 3 of the Walsh-Healey Public Contracts Act (41 U. S. C. 37), which have been found by the Secretary of Labor to have violated any of the agreements or representations required by that act.

(2) *Section 3, Davis-Bacon Act.* Those listed by the Comptroller General in accordance with the provisions of section 3 of the Davis-Bacon Act (40 U. S. C. 276a-2 (a)), as found by the Comptroller General to have violated said act.

(3) *Administrative debarments.* Those an executive agency, including the Coast Guard, determines to debar administratively for any of the causes and under all of the appropriate conditions listed in paragraph (e) of this section.

(4) *Section 3 (b), Buy American Act.* Those determined by an executive agency, including the Coast Guard, in accordance with section 3 (b) of the Buy American Act (Public Law 428, 72d Congress; 47 Stat. 1520; 41 U. S. C. 10b (b)), to have failed to comply with the provisions of section 3 (a) of that act under any contract containing the specific provision required by said section 3 (a) and made by the agency for construction, alteration, or repair of any public building or public work.

(5) *Section 1 (a), Walsh-Healey Public Contracts Act.* Those found by the Secretary of Labor ineligible to be awarded contracts for the reason that they do not qualify as "manufacturers" or "regular dealers" within the meaning of section 1 (a) of the Walsh-Healey Public Contracts Act (Public Law 846, 74th Congress; 49 Stat. 2036; 41 U. S. C. 35 (a)).

(d) *Treatment to be accorded firms or individuals in debarred or ineligible status.* Firms or individuals listed as debarred or ineligible shall be treated as follows:

(1) *Total restrictions.* Contracts shall not be awarded to firms or individuals that are listed on the basis of paragraph (c) (1), (2), or (3) of this section, nor shall bids or proposals be solicited therefrom: *Provided, however,* That when it is determined essential in the public interest by the Commandant (FS), an exception may be made with respect to a particular procurement action even when a firm or individual is listed as debarred on the basis of paragraph (c) (3) of this section.

(2) *Buy American Act restrictions.* As specified in the Buy American Act (41 U. S. C. 10b (b)), contracts shall not be awarded for construction, alteration, or repair of public buildings or public works in the continental United States or elsewhere to firms or individuals listed on the basis of paragraph (c) (4) of this section, nor shall bids or proposals therefor be solicited therefrom. However, firms or individuals listed on this basis may be awarded contracts and may be solicited for bids or proposals for other than construction, alteration, or repair of public buildings or public works in the continental United States or elsewhere.

(3) *Ineligibility restrictions of the Walsh-Healey Act.* Contracts shall not be awarded to firms or individuals in any amount exceeding \$10,000 for those materials, supplies, articles, or equipment with respect to which the firm or individual has been found to be ineligible to be awarded a contract by the Secretary of Labor, as provided in paragraph (c) (5) of this section. However, firms or individuals listed on this basis may, in the discretion of the Commandant (FS), be awarded contracts and may be solicited by bids or proposals for: (i) such materials, supplies, articles, or equipment when the amount does not exceed \$10,000; (ii) services regardless of amount; and (iii) commodities in which not declared ineligible regardless of amount.

(e) *Causes and conditions applicable to determination of debarment.* Each executive agency, including the Coast Guard, is authorized to debar in the public interest a firm or individual for any of the causes and under all appropriate conditions listed below. (See paragraph (a) (3) of this section.)

(1) *Causes.* (i) Conviction for commission of fraud in the obtaining of contracts or in the performance thereof;

(ii) Conviction under the Federal Anti-trust Statutes arising out of the submission of bids or proposals;

(iii) Conviction for commission of a criminal offense as an incident to obtaining a contract or in an attempt to obtain a contract;

(iv) Violation of contract provisions, as set forth in (a)-(c), of a character which is regarded by the agency involved to be so serious as to justify debarment action.

(a) Willful failure to deliver in accordance with the specifications or within the times of delivery provided in the contract.

(b) A history of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that the previous failure by the contractor is within a reasonable period of time preceding the determination to debar. However, failures to perform caused by acts beyond the control of the contractor shall not be considered.

(c) Violation of the contractual provision against contingent fees.

(v) Debarment by some other executive agency.

(2) *Conditions.* (i) Debarment for any of the above causes shall be made only upon approval of the head of the executive agency (the Commandant in the case of the Coast Guard) or his duly authorized representative.

(ii) Causes (i), (ii), and (iii) shall have been established by criminal conviction by a court of competent jurisdiction. In the event appeal taken from such conviction results in reversal of conviction, the debarment shall be removed if the bidder so requests. (Note, however, that criminal conviction for the above mentioned offenses does not necessarily require that the firm or individual be debarred, and that the decision to debar is still within the discretion of the executive agency concerned. The seriousness of the offense, the civil satis-

faction received by the Government or available to the Government, and all mitigating factors should be considered in making the determination to debar.)

(iii) Cause (iv) shall be established by evidence which the executive agency determines to be clear and convincing.

(iv) Debarment for Cause (v) shall be made on the same bases as provided for whichever of Causes (i) to (iv) is appropriate, and may be based entirely upon the record of facts obtained by the original debarment agency, or upon a combination of additional facts with the record of facts of the original debarment agency.

(v) The debarment shall be for a reasonable, definitely stated period of time commensurate with the seriousness of the offense.

(vi) The firm or individual shall be given written notice of the debarment. The notice shall state as a minimum the period of debarment including effective dates, the reasons for debarment including a statement of the specific instances of dereliction, and shall provide reasonable opportunity for the contractor to present information for consideration upon his behalf.

RECEIPT AND OPENING OF BIDS

§ 116.02-55 *What constitutes a bid.* The submission of a bid on Standard Forms 21 or 33, or a letter embodying the specifications and conditions, signed by the bidder, constitutes a bid in connection with procurement by advertising.

§ 116.02-56 *Public opening of bids mandatory.* (a) All bids must be opened in public, by or in the presence of an officer or civilian administrative assistant designated by the contracting officer.

(b) Whenever bids have been solicited, the parties responding to such solicitations shall be duly notified of the time and place of opening of the bids, and be permitted to be present either in person or by attorney, and a record of each bid shall then and there be made.

§ 116.02-57 *Bids to be opened at the appointed time.* Bids shall not be opened in advance of the appointed time, which shall be stated on the invitation for bids.

§ 116.02-58 *Premature information forbidden.* No information relating to competitive projects which might affect competition shall be disclosed to anyone until the bids are publicly opened.

§ 116.02-59 *All bids to be preserved and recorded.* A copy of each bid received shall be preserved and recorded and retained in the permanent files of the contracting office. (See § 116.02-71.)

§ 116.02-60 *Failure of bidder to sign bid papers.* When a bidder fails to sign his bid and the bid is accompanied by a letter proposal properly signed, his bid is entitled to the same consideration as a properly signed bid.

§ 116.02-61 *Withdrawal of bids prior to opening.* Bids may be withdrawn at any time prior to the opening of the bids.

§ 116.02-62 *Withdrawal of bids prohibited after opening.* Except as limited by an option, a bid cannot after an opening be withdrawn before a reasonably sufficient time has elapsed for the proper

examination of all bids received. In the case of bids submitted under a guaranty the bidder, if he attempts a withdrawal or an evasion after award, is held by the bond of agreement to execute a contract. Where no guaranty is required with the bid the bidder cannot be forced to execute a contract, recourse being to purchase against his account and collect the excess cost. Headquarters approval shall be requested prior to making a purchase against a contractor's account in the event of default.

§ 116.02-63 Late bids received by mail. Bids received in the mails after the hour of opening, which show by their respective postmarks that they were not mailed in proper time or manner to have been received by the specified hour of opening shall not be opened, but shall be returned to the bidder with a letter stating the time and place of mailing as shown by the postmark. When necessary to open the envelope to ascertain the name and address of the bidder, or to obtain any other identifying information, the circumstances of the opening shall be stated in the letter to the bidder.

§ 116.02-64 Bids delayed in the mail. Bids received after the hour fixed for the opening due to delays in the mail, but before award is made, will be considered provided the envelope containing the bid bears evidence of its mailing in time for arrival before the hour of opening. The following will be accepted as satisfactory evidence of its mailing in time for arrival before the hour of opening:

(a) When the envelope containing the bid bears a post office cancellation mark showing clearly that the bid was mailed in proper time and manner to have been received in the ordinary course of mail before the time fixed for the opening of bids.

(b) When the envelope containing the bid bears a metering device indicium and (1) the indicium includes the hour in addition to the city, state, and date, the indicium will be given the same recognition as a post office postmark and the rule in paragraph (a) of this section applies; or (2) the date only is shown in the indicium, and that date is such that the bid if mailed as late as the last hour of that day, would have arrived in the normal course of the mail at or before the time stated for the opening of the bid; or (3) the date only is shown in the indicium, and that date is such that the bid if mailed at some hour before the end of that day, would have arrived in the normal course of the mail at or before the time set for the opening, provided that before any award is made to the bidder concerned, an affidavit secured from him setting forth the actual hour of mailing shows that the bid was mailed on or before the hour which would have permitted the bid to have been received in the ordinary course of the mail at or before the time of opening of bids.

§ 116.02-65 Attempt to gain advantage by late bids. Evidence of an attempt on the part of the bidder to secure an advantage in the late mailing of a bid will be reported to the Commandant (FS). Frequency of late bids by the same

bidder may be prima facie evidence requiring investigation.

§ 116.02-66 Records of late bids. All bids received in the mails after the time fixed for the opening shall be entered in the permanent record showing for each the time and place of mailing as indicated by the postmark. The witnessing officer shall initial the entry for each bid which, having been mailed in time, must be considered in deciding the awards. The envelopes for those particular bids shall be retained for at least one month after the opening of bids, available for inspection by bidders.

§ 116.02-67 Late bids presented by hand. A bid presented by hand after time of opening specified in the advertisement is a late bid and shall not be received.

§ 116.02-68 Telephonic bids. Telephonic bids may be solicited in cases of emergency. An adequate number of bona fide bids must be obtained, and all the procedure must harmonize as nearly as possible with the regular purchase procedure.

§ 116.02-69 Telegraphic bids. When bids are requested by purchasing officers to be submitted by telegram, the request for such bids will be worded as follows: "Telegraphic bids requested, to be received in (office concerned) by (hour and date fixed)."

§ 116.02-70 Bid improperly identified. No responsibility will be attached to an officer for the premature opening of a bid not properly addressed and identified.

§ 116.02-71 Recording of bids. The names of the bidders and the prices bid shall be recorded in a permanent record of the purchase transaction. When the items are too numerous to warrant recording of bids completely as in the case of periodical provisions contracts, an entry shall be made of the opening date, general description of the material, and the total number of bids received. The permanent record of bid results shall be maintained in ink or typewriter on Abstract of Bids, Form CG-3477, and Continuation Sheet, Form CG-3477A.

§ 116.02-72 Availability of bids and records. The permanent record and the bids will be available for public inspection. The original bids shall not be allowed to pass out of the hands of an official of the Government, except when the duplicate cannot be made available for public inspection and then only under the immediate supervision of an official of the Government under conditions which preclude the possibility of a substitution, addition, deletion, or alteration in the bid.

§ 116.02-73 Reading bids aloud. When bids are received they will be placed under lock and key where they will remain until advertised time of opening, when they will be removed and opened concurrently and publicly under the supervision of an officer or civilian administrative assistant. All bids will be read aloud in the presence of bidders, press representatives, and representatives of bonding companies, and immediately recorded. After bids have been

read and recorded, copies may be examined by all interested parties.

ACCEPTANCE OF BIDS

§ 116.02-85 Award to the lowest bidder. The lowest eligible bidder offering to furnish the required supplies or services in accordance with the requirements is entitled to the award, in the absence of specific laws and regulations to the contrary.

§ 116.02-86 Where time is a controlling element. Where time is a controlling element, the bids must clearly show the time required for performance, and must include a liquidated damages clause for the protection of the Government. In such cases, all bids offering delivery within the required time limit shall be considered for award, and award shall be made to the lowest satisfactory bidder within the group of bidders complying with the time requirements.

§ 116.02-87 Liquidated damages, computation of time. Where a contract provides for liquidated damages for delay at a specific rate for each and every day or per calendar day, such damages shall be computed on the basis of calendar days rather than working days.

§ 116.02-88 Tie bids. (a) When two or more low bids are equal in all respects (taking into consideration cost of transportation, cash discounts, and all other factors properly to be considered), award shall be made by a drawing by lot which shall be witnessed by at least three persons and which may be attended by the bidders or their representatives, *Provided:*

(1) Subject to subparagraphs (2), (3) and (4) of this paragraph, (i) in the case of equal low bids, one of which is submitted by a small business concern, as defined in § 116.01-70, award shall be made to the small business concern, and (ii) in the case of equal low bids, two or more of which are submitted by small business concerns, award shall be made by a drawing by lot limited to the small business concerns.

(2) Where two or more equal low bids are received from small business concerns, one of which is submitted by a bidder who will perform the contract in a distressed employment area, designated as such by or on behalf of the President, award shall be made to the small business concern who will perform the contract in the distressed employment area.

(3) In the case of equal low bids, two or more of which are submitted by small business concerns who will perform the contract in a distressed employment area, award shall be made by drawing by lot limited to the small business concerns in the distressed employment area.

(4) Where two or more equal low bids are received, one bid being from a business concern (whether small or not) not in a distressed employment area and the other being from a bidder who, although not a small business concern, will perform the contract in a distressed employment area, award shall be made to the latter.

(5) The phrase "distressed employment areas" as used herein shall be in-

terpreted to mean Group III or Group IV as classified in the latest summary of Labor Market Developments in Major Areas published by the Department of Labor.

(b) When award is to be made by lot and the information available shows that the product of a particular manufacturer is offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

§ 116.02-89 Unit prices govern. In case of error in the extension of prices quoted on a bid, the unit price shall govern unless the quoted unit price is so obviously in error as to be immediately apparent to both parties involved.

§ 116.02-90 Interest charges in bids. No bids shall be accepted on which a bidder insists that a provision for interest charges on overdue accounts from due date to date of payment be in and made a part of the contract. Such a bidder may be permitted to withdraw his stipulation for interest even after the opening of bids. In the absence of specific authority, no contracting officer can obligate the Government to pay interest on the amount of invoices not paid within a specified time.

§ 116.02-91 Inexperience of bidder. Inexperience alone of the lowest bidder does not justify the acceptance of a higher bid.

§ 116.02-92 Alleged incompetency of bidder. Incompetency of a bidder must be clearly shown before his bid can be rejected and a higher bid accepted. The question of competency should be carefully considered before inviting a firm to bid.

§ 116.02-93 Unknown trade name or makes. Acceptance of other than the lowest bid is not authorized when the lowest bid is rejected simply because the maker of the instrument or article named is unknown and there is a possibility of its becoming unserviceable. Acceptance of other than the lowest bid for the reason of previous use of a patented article is not alone sufficient. Purchase of a particular item without advertising simply because it has been found satisfactory in previous use is not authorized.

§ 116.02-94 Splitting of award. The splitting of an award between the lowest and a higher bidder for the alleged purpose of encouraging continued competition is not authorized. The lowest satisfactory bidder is entitled to award.

§ 116.02-95 Absence of competition. Absence of competition is a good reason for rejecting all bids and asking for new ones.

§ 116.02-96 Only one bid received. When an effort has been made to obtain competition and only one bid is received and, in the judgment of the contracting officer, it is considered reasonable, it may be accepted.

§ 116.02-97 Acceptance of one bid is rejection of all others. The acceptance of one bid is a rejection of all other bids

for the same item, and one of the bids so rejected cannot be accepted at a later date. All bidders should be advised of the action taken on their bids, by notice of acceptance in the case of the bidder to whom award is made, and by notice of rejection to bidders whose bids were not accepted.

§ 116.02-98 Fraudulent bids. The United States may reject a bid in case of fraud: For example, when the lowest bidder is in collusion with other bidders or with the representatives of the United States to impose a high price upon the Government, etc. In such cases, the bids of all bidders involved in the fraud shall be rejected and the case immediately referred to the Commandant (FS).

§ 116.02-99 Rubber stamp signature acceptable. Rubber stamp signatures on a bid are acceptable provided the responsible officer is satisfied that it was placed on the bid by authority of the bidder.

§ 116.02-100 Alternative bids. Alternative bids will not be considered unless called for in the invitation.

§ 116.02-101 Bids offering modified specifications. If only the essential requirements are stated in the invitation for bids, all bids however modified or qualified should be considered although no bid can be accepted for material lacking in any of the essentials. Bids will not ordinarily be considered for any other quantity or description of supplies than specified but the right is reserved to accept any modification made by a bidder in the conditions therein stipulated. A bid modified to such an extent that its acceptance would be unfair to competing bidders will not be accepted.

§ 116.02-102 Descriptive matter and samples. Specifications, plans, illustrations, samples, or other descriptive matter, when required by the Government to be furnished by the bidder must accompany the bid. In connection with the furnishing of samples, the Comptroller General has held that failure of a bidder to submit samples as required bars consideration of his bid.

§ 116.02-103 Bidder's option. A bidder may specify a maximum quantity which will be furnished at the price quoted, and likewise a time limit for acceptance or delivery. If a proposal containing conditions of this kind is accepted, the contract is binding.

§ 116.02-104 Corrections to be explained. Corrections, erasures, or other changes in a bid must be explained or noted over the signature of the bidder.

§ 116.02-105 More than one bid submitted by the same bidder. If more than one bid be offered by any one party, by or in the name of his or their clerk, partner, or other person, all such bids may be rejected. This will not prevent a bidder from submitting modified or alternate bids quoting different prices on different quantities of materials or different conditions of delivery. A manufacturer who has quoted prices to one of the bidders is not thereby disqualified from himself submitting a direct bid for the same article.

§ 116.02-106 Modification by bidder not permitted. After bids have been publicly opened at the time set, no changes, corrections, or alterations can be made therein by the bidder.

§ 116.02-107 Modification by Government not permitted. In awarding the contract to the lowest bidder the contracting officer cannot modify the terms of his bid in regard to time of delivery or any other of its material elements. While the Government may not force the bidder to accept award under terms different from those contained in his bid, modifications may, after award, be made with the bidder's consent, and the changes mutually agreed upon may be embodied in the contract. No modification of the bids shall be permitted after the opening which modifies or changes the bids so as to affect the award.

§ 116.02-108 Modification of bids; telegram. A bidder under an advertisement for sealed bids may, previous to the opening of the bids, modify his bid by telegram, and the modified bid, if authentic, would upon acceptance before withdrawal, bind the bidder. Telegrams modifying sealed bids which are received before the hour of opening shall immediately be placed in sealed envelopes and shall publicly be opened at the appointed hour with the original bids from the senders. However, since telegrams, unlike letters, are revocable until delivered, the official time of receipt shall be the hour at which the telegram is received by the Government (which shall be stamped or written on the telegram); the hour at which sent by the bidder shall not govern.

§ 116.02-109 Mistakes in bids. The United States is not responsible for mistakes in prices made by a bidder, and an accepted bid is binding unless the prices are so disproportionate as to put the contracting officer on notice and enforcement would be unconscionable. When it appears that a bid is in error, the bidder should be requested to verify such bid prior to award. If award has not been made, the bidder may be permitted to withdraw his bid and the award should then be made to the next qualified bidder. After award the discretion vested in the contracting officer ceases, and requests received from contractors for release on contracts based on bids in error will be forwarded to the Commandant (FS) accompanied by full data, comment, and recommendation for decision and action. The Commandant can only refer the case to the General Accounting Office for decision.

§ 116.02-110 Bidder alleges mistake. Where a bid to furnish stipulated quantities of supplies is accepted, the supplies delivered, and the contract prices paid, and it is subsequently established that at the time of the opening of the bids the contracting officer was put upon notice that the contractor had made a mistake in submitting his bid, such mistake being apparent from an examination of the bid itself and from a comparison thereof with other bids submitted, the contractor is entitled to submit a claim for the difference between the contract price and the prices intended to

have been submitted for such supplies provided that the intended bid of the contractor is lower than any other bid received thereon. Any such claim must be forwarded to the Commandant (FS) accompanied by all papers or certified copies thereof pertaining to the transaction for submission to the General Accounting Office for decision.

§ 116.02-111 Maximum prices quoted. (a) A proposal that quotes a maximum price with a provision for a reduction in the event the current market price is reduced, without a provision for increases above the quoted maximum, is a valid basis for a contract. In such case the bidder shall state the current market price at the date of the bid and each voucher must be supported by a statement of the market price at the date of delivery. This certificate is required irrespective of whether or not any changes have been made in the price.

(b) Except as shown in paragraph (a) of this section, a fixed price, effective during the entire period covered by the contract must be shown.

(c) A proposal that quotes a current price, subject to market fluctuation, does not constitute the basis for a contract and shall not be considered.

§ 116.02-112 Discounts; determination of award. The determination of award when discounts are offered in bids is a matter for decision by the contracting officer. If, by reason of the offered discount, a bid is low and there appears reasonable certainty that the performance of the necessary administrative duties in connection with receipt, inspection, and payment is practicable of accomplishment, the bid should be accepted; if not, the bid should not be regarded as low. The fact that discount was considered shall be noted on Standard Form 1036.

§ 116.02-113 Time limit for award. An obligation lies upon the Government to make an award within a reasonable length of time after an opening of bids. An award should be made at the earliest practicable moment after the opening of bids and in no event later than 60 days from the date of opening. After a 60 day period, the bidder cannot be held to his offer. A bid qualified as to acceptance time must be accepted accordingly or rejected as not being responsive to the invitation. A bidder cannot withdraw his bid after notice of acceptance thereof by the Government.

§ 116.02-114 Acceptance of bids in writing. When bidders' proposals are submitted in writing, the contracting officer will endorse over his signature the word or words "Accepted" or "Accepted as to items Nos. _____" on the proposal covering the award. Acceptance shall always be in writing.

§ 116.02-115 Forms of award. When an award is made to a bidder, it will be embodied either on Standard Form 23 (Construction Contract) or acceptance on Standard Form 33 (Invitation, Bid and Award).

§ 116.02-116 Error in award. If an award is made to a higher bidder in

error and the contractor has proceeded with manufacture and delivery before the error has been discovered, the contract should be considered completed with deliveries already made, and payment shall be made not in excess of the lowest satisfactory bid which was received at the original opening. The contractor should then be advised that he may submit a claim to the General Accounting Office for the difference between his price and the price quoted by the lowest satisfactory bidder. He may also submit a claim to the General Accounting Office for any damages which he may have sustained through the suspension of deliveries under his contract.

§ 116.02-117 Readvertisement. A readvertisement is equivalent to a rejection of all bids previously received.

CERTIFICATES OF AWARD

§ 116.02-140 When certificates of award are required. Every contract and purchase agreement (except purchase orders issued under existing contracts) made as the result of advertising, shall be supported by a Statement and Certificate of Award (Standard Form 1036, Revised), signed by the contracting officer to show the method and extent of advertising; and the basis of award. If other than the lowest bid is accepted, the reasons for rejection of the lower bids shall be explained on the form. (See also § 116.03-70.)

§ 116.02-141 Disposition of copies. On contracts requiring the assignment of a contract number, the original signed certificate shall be attached to the original of the contract. A copy shall be retained with the official file copy of the contract at the contracting office. On purchases made on contracts not requiring the assignment of a contract number, the original signed certificate shall be attached to the original of the accepted bid and a copy shall be retained in the official files of the contracting office.

§ 116.02-142 Essential information to be shown. The name of the contractor will be inserted at the top of the form above the space provided for the contract number. The appropriation and subhead pertaining to the contract shall be noted on the certificate.

§ 116.02-143 Justification of unusual awards to be shown. (a) When acceptance of other than the lowest bid as to price (expenditures) or other than the highest bid as to price (receipts) is made, Standard Form 1036 will list in detail the results of all bids. If acceptance of a higher bid (expenditures) or a lower bid (receipts) is made, the reasons for rejection of the lowest bid (expenditures) or the highest bid (receipts) shall be listed on the form, in a manner substantially as shown in the specimen below:

Specimen 1 (acceptance of other than lowest bid—expenditures)

John Doe & Co.	\$450.00
John Smith & Co.	\$400.00
John Jones & Co.	\$470.00

* Awarded.

Lower bid of John Doe & Co. rejected as samples submitted did not meet the specifications, being brass instead of bronze.

Specimen 2 (acceptance of other than the highest bid—receipts)

John Doe & Co.	\$450.00
John Smith & Co.	\$400.00
John Jones & Co.	\$470.00

* Awarded.

Higher bid of John Jones & Co. rejected as bidder called for delivery at his yard contrary to "where is, as is" provision of specifications.

(b) In the case where an award is made in favor of a small business concern or is placed in a distressed employment area, the circumstances under which award was made shall be briefly recited on the Certificate of Award together with a statement that it has been administratively determined that the award will further the Congressional policy with respect to small business expressed in section 2 (b) of the Armed Services Procurement Act of 1947 or will further the President's policy with respect to distressed employment areas, or both, as the case may be.

(c) Where an award involves a mistake in bid and the matter has been resolved by administrative action, Standard Form 1036 will be accompanied by a copy of the resulting instructions as received in the premises, together with other pertinent documents supporting the case. If an award involves a mistake in bid on which the Comptroller General has rendered a decision, Standard Form 1036 will contain a citation by number and date of the decision or a copy thereof shall be securely attached to the form.

SUBPART 116.03—PROCUREMENT BY NEGOTIATION GENERAL

§ 116.03-1 Definition of negotiation. The term "negotiation" as used herein means that method of procurement under which the formal procedure for procurement by advertising is not required.

§ 116.03-2 Need for competition. Authority to negotiate purchases or contracts does not modify in any respect the fundamental principle that supplies and services will be obtained as the result of competition. Accordingly, where competition exists, qualified suppliers will be afforded the opportunity to submit quotations by informal solicitation to the extent that such procedure is consistent with the needs of the occasion.

§ 116.03-3 Absence of competition. Where no competition results from the informal solicitation, or insufficient number of suppliers submit quotations, or the prices appear excessive when checked against previous prices, or where the procurement must necessarily be placed with a single source of supply under any of the circumstances enumerated, negotiation will be conducted on a basis of thorough analysis of the suppliers' estimated and/or historical cost data. Careful use of price cost analysis in connection with negotiated purchases will protect the Government against excessive prices.

§ 116.03-4 General limitations upon the use of negotiation. No contract shall be entered into as a result of negotiation unless the contemplated procurement

comes within the circumstances permitting negotiation as stated in the act and as set forth herein.

§ 116.03-5 Certain negotiations restricted to Headquarters. The negotiation of contracts under certain circumstances require special determinations and findings by the Commandant or by the Comptroller. Accordingly, the authority to negotiate contracts under such circumstances is restricted to Headquarters as set forth in this subpart. The negotiation of such contracts shall be in accordance with the requirements of the act, and shall be governed, insofar as practicable, by the procedures established by the Armed Services Procurement Regulations (32 CFR, Chapter IV, Subchapter A).

§ 116.03-6 Determinations and findings. Determinations and supporting findings which are required by the act and which are referred to throughout these instructions, and which are prerequisites to the authority to negotiate certain types of contracts, will be made by the Commandant (FS). The determinations and findings shall be in the form and requirement as specified by the act and shall, insofar as practicable, be in accordance with the procedures set forth in the Armed Services Procurement Regulations. Copies of all Headquarters determinations, decisions and findings, and all data with respect to the negotiation shall be preserved for 6 years following the date of final payment of the contract.

§ 116.03-7 Method of negotiation. (a) "Negotiation" is to be interpreted as the procedure by which the Government may make the most desirable type of contract for the required supplies or services, under circumstances authorized by the act, and without the necessity of following the procedures relating to procurement by formal advertising. Negotiation shall, generally, be effected by giving one or more selected and qualified dealers an opportunity to submit a quotation (as distinguished from a "bid," which pertains to procurement by advertising) for the required items; analyzing the quotations received; and (i) either accepting the most advantageous quotation as submitted, or (ii) entering into further negotiations with one or more of the dealers in an attempt to secure more advantageous terms than contained in the original quotations. In the negotiation of contracts, due attention shall be given to the following and any other appropriate factors:

(1) Comparison of prices quoted, and consideration of other prices for the same or similar supplies or services, with due regard to cost of transportation, cash discounts, and any other factor relating to price;

(2) Comparison of the business reputations and responsibilities of the respective persons or firms who submit quotations;

(3) Consideration of the quality of the supplies or services offered, or of the same or similar supplies of services previously furnished, with due regard to the satisfaction of technical requirements;

(4) Consideration of delivery requirements;

(5) Discriminating use of price and cost analyses;

(6) Investigation of price aspects of any important subcontract;

(7) Individual bargaining, by mail or by conference;

(8) Consideration of cost sharing; and

(9) Effective utilization in general of the most desirable type of contract, and in particular of contract provisions relating to price redetermination.

(10) In the case of firm fixed-price contracts, where substantial subcontracting is indicated and negotiation is to be based principally on cost estimates, a showing by the prime contractor as to the reasonableness of price of the principal subcontracts or purchase orders shall be required prior to entering into a contract.

(11) Availability of funds to cover the project.

(b) In the case of all unclassified negotiated contracts, the contracting officer will notify the unsuccessful bidders who submitted quotations that their proposals were not accepted. If specifically requested by one of the unsuccessful bidders, who actually submitted a quotation, the contracting officer will furnish the name and address of the successful bidder and the actual or approximate contract price, but will not reveal the cost breakdown or the amounts and conditions of unsuccessful bidders' quotations.

§ 116.03-8 Public notices not required. The posting of a copy of a notice of the proposed procurement in a public place is not required in connection with procurement by negotiation.

§ 116.03-9 Public openings not required. Although requests for the submission of written quotations should specify that the quotations are to be submitted in sealed envelopes, and should state a time limit for the receipt of such quotations, the holding of a public opening of quotations is not required.

§ 116.03-10 Sufficient time to be allowed for submission of quotations. When written quotations are requested, sufficient time shall be allowed for the preparation and submission of quotations. The time limit for the receipt of quotations shall be clearly stated in all requests for quotations.

§ 116.03-11 Oral quotations. While written quotations are preferable for procurement by negotiation, oral quotations may be solicited at the option of the contracting officer. It is mandatory, however, that a record of all oral quotations be maintained in connection with any purchase. For purchases involving amounts in excess of \$1,000, oral quotations shall always be confirmed in writing.

§ 116.03-12 Record and report of negotiated contracts. As will be noted in Subpart 116.01, each district office and Headquarters unit will maintain a record and prepare a report of the number and total value of all contracts negotiated during each fiscal year under each of the circumstances permitting negotiation in the field as prescribed hereafter.

In order to compile such records and reports, each contract or purchase document representing a procurement which was effected under "Negotiation" authority shall be clearly marked in the upper right-hand corner of the document with the words "NEGOTIATED" followed by a citation of the applicable section of the act under which the negotiation was authorized; for example, a document relating to a negotiated purchase not in excess of \$1,000 would be inscribed "NEGOTIATED, section 2 (c) (3)."

§ 116.03-13 Advance payments on negotiated contracts. Contracts providing for advance payments may be made under certain definite restrictions as set forth in section 5 of the act. The making of a contract providing for an advance payment is restricted to the Commandant (FS-1).

FORMS AND FORM PREPARATION

§ 116.03-20 Contract forms. Pending the adoption of revised forms, the various contract forms and conditions presently in use will be utilized in connection with the solicitation and submission of quotations and the execution of contracts and purchase orders pertaining to negotiated procurement, to the extent that such forms and conditions are not inconsistent with the requirements of the act. All reference to section 3709, Revised Statutes, shall be deleted from such forms. Authority is granted to modify such forms as may be deemed necessary by the contracting officer to conform to requirements pertaining to negotiation of contracts.

§ 116.03-21 Solicitation of quotations. "Quotations" in lieu of "bids" are the basis of offers relating to negotiated procurement transactions. Normally, Form CG-2982 (Request for Quotation) shall be used to solicit quotations on negotiated procurement of supplies and equipment. However, Standard Form 33 (Invitation, Bid and Award) may be used for this purpose after being altered to eliminate all references to advertised procurement. Requests for quotations, which will result in the award of a construction contract on Standard Form 23 (Construction Contract), will in every instance be effected by using Standard Form 20 (Invitation for Bids, Construction Contract) and Standard Form 21 (Bid, Construction Contract), after deleting all references to advertising. Requests for quotations, whether on Form CG-2982, Standard Forms 20, 21, or 33, appropriately altered, shall be accompanied by the applicable contract condition forms (see § 116.02-12) in the same manner as procurement by advertising. When Standard Forms 20 and 21 are altered and used as a request for quotations, the requirement relative to the Predetermination of Wages shall be adhered to.

§ 116.03-22 Types of contracts. The act permits the use of any type of contract which will promote the best interests of the Government. Approved types of contracts include fixed price, fixed price with redetermination of prices, cost-plus-a-fixed fee, incentive, and cost-sharing contracts. The fixed

price type of contract shall be used by field units. The use of other types of contracts is restricted to Headquarters, or to field units when specifically authorized by the Commandant (FS). The use of "cost-plus-a-percentage-of-cost" type of contract is prohibited by the act. Form CG-3477, Abstract of Bids, and CG-3477A, Continuation Sheet, may be used to record the results of requests for quotation.

§ 116.03-23 *Mandatory provisions.* Section 4 of the act requires that every contract negotiated under the act include a provision against contingent fees for obtaining the contract; therefore, the prescribed contract clause pertaining to warranty against contingent fees shall be included in every negotiated contract. The act (sec. 8) further provides that no contract shall be exempt from the Act of June 30, 1936, as amended (Walsh-Healey Act) (41 U. S. C. 35 to 45); the Act of March 3, 1931, as amended (Davis-Bacon Act) (40 U. S. C. 276a to 276a-5), or the Act of June 19, 1912, as amended (Eight Hour Law and Overtime Compensation) (40 U. S. C. 321 to 326) if otherwise applicable to the particular transaction. The prescribed contract clauses relating to such acts shall be used as applicable.

§ 116.03-24 *Authority clause.* When section 2 (c) (1) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151) is used as the authority to negotiate, the contract will contain the following statement:

This negotiated contract is entered into pursuant to the provisions of section 2 (c) (1) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (1)), and any required determination and findings have been made.

This statement must appear on each purchase order or contract document.

CIRCUMSTANCES PERMITTING NEGOTIATION

§ 116.03-30 *Basic authority.* Subject to the instructions herein, and pursuant to the authority of section 2 (c) of the Armed Services Procurement Act of 1947, (41 U. S. C. 151(c)) procurement may be effected by negotiation under any one of the circumstances set forth in §§ 116.03-31—116.03-48.

§ 116.03-31 *National emergency (sec. 2 (c) (1)).* (a) Each contracting officer in the U. S. Coast Guard during the period of the National Emergency declared by the President of the United States, 16 December 1950, may, pursuant to the determination of the Commandant set forth below, negotiate contracts under the authority of section 2 (c) (1) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151).

December 26, 1950.

DETERMINATION

AUTHORITY TO NEGOTIATE PURCHASES AND CONTRACTS UNDER SEC. 2 (c) (1) OF THE ARMED SERVICES PROCUREMENT ACT OF 1947

1. A National Emergency having been declared by the President of the United States on 16 December 1950, I hereby determine, in accordance with section 2 (c) (1) (41 U. S. C. 151) of the Armed Services Procurement Act of 1947, that it is necessary in the public

interest that, to the extent provided in paragraph 2 hereof, purchases and contracts under the said Act be negotiated without formal advertising during the period of said National Emergency.

2. Accordingly, I hereby authorize the negotiations of purchases and contracts by the U. S. Coast Guard, under section 2 (c) (1) of the Armed Services Procurement Act of 1947, during the period of said National Emergency. Formal advertising may, however, continue to be used.

MERLIN O'NEILL,
Vice Admiral, U. S. Coast Guard,
Commandant.

(b) When purchases and contracts are negotiated, section 2 (c) (1) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151) should generally be used as the authority to negotiate rather than other applicable circumstances contained in sec. 2 (c) of the act; however, procurements that would normally be classified under the following sections of the act will be restricted to the Commandant (FS-1):

- (1) Section 2 (c) (4).
- (2) Section 2 (c) (5).
- (3) Section 2 (c) (8).
- (4) Section 2 (c) (11).
- (5) Section 2 (c) (14).
- (6) Section 2 (c) (16).
- (7) Section 2 (c) (17).

§ 116.03-32 *Public exigency (sec. 2 (c) (2)).* Pursuant to the authority of section 2 (c) (2) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (2)), purchases and contracts may be negotiated if "the public exigency will not admit of the delay incident to advertising." In order for this authority to be used the need must be compelling, and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date, and when they could not be procured by that date by means of advertising. Examples are (a) Supplies or services needed at once because of a fire, explosion, or other disaster; (b) Essential equipment for or repair of a ship, where advertising would delay sailing or where the delays incident to formal advertising would result in loss to the Government; (c) Essential equipment for or repair to any aircraft grounded or about to be grounded, when such equipment or repairs is needed at once for the completion of the operational mission of such aircraft. Every contract negotiated under the authority of this article shall be accompanied by a Statement and Certificate of Award (Standard Form 1036), signed by the contracting officer, justifying procurement under this authority.

§ 116.03-33 *Purchases not in excess of \$1,000 (sec. 2 (c) (3)).* Pursuant to the authority of section 2 (c) (3) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (3)), purchases and contracts may be negotiated if "the aggregate amount involved does not exceed \$1,000." In arriving at the aggregate amount involved, there must be included all supplies and services which would properly be grouped together in a single transaction, and which would be included in a single advertisement if the

procurement were being effected by advertising. Purchases aggregating more than \$1,000 shall not be broken down into several purchases which are less than \$1,000 nor shall customary purchasing or contracting procedures be altered, merely for the purpose of permitting negotiations. Under this authority, contracting officers may purchase any supplies or services when the aggregate total does not exceed \$1,000, by negotiation and without formal invitation for bids. Quotations may be obtained orally (over the counter), by telephone, telegraph, or by written solicitation. Competition should be secured whenever practicable to do so without delaying procurement, unduly increasing the work involved in the procurement, or otherwise obviating the benefits derived under this authority. Written confirmation of all orders placed is required.

§ 116.03-34 *Personal or professional services (sec. 2 (c) (4)).* Pursuant to the authority of section 2 (c) (4) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (4)), purchases and contracts may be negotiated "for personal or professional services" except Architect-Engineer Professional Services as set forth in § 116.03-48. The authority to negotiate for personal or professional services shall not apply to the procurement by negotiation of any type of services authorized under any other provisions of the act. This authority is restricted to Headquarters and shall be used only when all of the following conditions have been satisfied:

(a) If personal services, they are required to be performed by an individual contractor in person (not by a firm), or if professional services, they may be performed by an individual contractor in person or by a firm or organization.

(b) The services (1) are of a professional nature, or (2) are to be performed under Government supervision and paid for on a time basis.

(c) The procurement of such services is otherwise specifically authorized by law.

§ 116.03-35 *Services of educational institutions (sec. 2 (c) (5)).* Pursuant to the authority of section 2 (c) (5) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (5)) purchases and contracts may be negotiated "for any service to be rendered by any university, college, or other educational institution." This authority is restricted to Headquarters, and may be used for either of the two following types of services:

(a) Educational or vocational training services to be rendered by any university, college, or other educational institution in connection with the training and education of personnel, and for necessary material, services, and supplies furnished by any such institution in connection therewith.

(b) Experimental, developmental, or research work (including services, tests, and reports necessary or incidental thereto) to be conducted by any university, college, or other educational institution, and reports furnished in connection therewith.

§ 116.03-36 *Purchases outside the United States (sec. 2 (c) (6)).* Pursuant to the authority of section 2 (c) (6) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (6)), purchases and contracts may be negotiated if "the supplies or services are to be procured and used outside the limits of the United States and its possessions." This authority shall be used only for purchases made abroad, such as supplies, construction work, or other services for overseas installations or for use of occupational forces (irrespective of the actual place of negotiation or execution of the contract).

§ 116.03-37 *Medicines or medical supplies (sec. 2 (c) (7)).* Pursuant to the authority of section 2 (c) (7) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (7)), purchases and contracts may be negotiated "for medicines or medical supplies." This authority shall be used only when the following requirements have been satisfied.

(a) The items are not obtainable through Public Health Service or from other Government sources of supply; and

(b) Such supplies are peculiar to the field of medicine; and

(c) The cost is charged to Coast Guard appropriations (and not to Public Health Service funds); and

(d) Whenever the probable cost will exceed \$10,000 the procurement is restricted to Headquarters.

§ 116.03-38 *Supplies purchased for authorized resale (sec. 2 (c) (8)).* Pursuant to the authority of section 2 (c) (8) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (8)), purchases and contracts may be negotiated "for supplies purchased for authorized resale." This authority cannot now be exercised by the Coast Guard.

§ 116.03-39 *Perishable subsistence supplies (sec. 2 (c) (9)).* Pursuant to the authority of section 2 (c) (9) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (9)), purchases and contracts may be negotiated "for perishable subsistence supplies."

§ 116.03-40 *Supplies or services for which it is impracticable to secure competition by formal advertising (sec. 2 (c) (10)).* (a) Pursuant to the authority of section 2 (c) (10) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (10)), purchases and contracts may be negotiated "for supplies or services for which it is impracticable to secure competition" by formal advertising. This authority will apply in the following cases, but only for transactions involving amounts in excess of \$1,000 (purchases involving amounts of \$1,000 or less will be made under the provisions of § 116.03-31).

(1) When the items are obtainable from a sole manufacturer or dealer. It is not sufficient to justify the purchase of a particular make of an item under this authority when other makes are available which will accomplish the same results;

(2) When the items have no commercial counterpart and can only be obtained from a single source of supply;

(3) When the existence of patent rights, secret processes, or similar circumstances preclude competition;

(4) When the items are parts of equipment or apparatus already in use and can only be furnished by one dealer;

(5) When bids have been solicited by advertisement and none is received, or none complies with all essential requirements of the specifications;

(6) When the purchase is for utilities, including electricity, gas, water, sewage disposal, steam, railroad track maintenance and switching service, inspection and maintenance of fire alarm systems, boiler inspection, and maintenance of elevators.

(b) Every contract negotiated under the authority of this article shall be accompanied by a Statement and Certificate of Award (Standard Form 1036), signed by the contracting officer, justifying procurement under this authority.

§ 116.03-41 *Experimental, developmental, or research work (sec. 2 (c) (11)).* (a) Pursuant to the authority of section 2 (c) (11) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (11)), purchases and contracts may be negotiated if the Commandant "determines that the purchase or contract is for experimental, developmental, or research work, or for the manufacture or furnishing of supplies for experimentation, development, research, or test." *Provided*, That in the case of contracts for \$25,000 or less, the Comptroller is authorized without power of redelegation to make the required determination. This authority is restricted to Headquarters and may be used for any of the following purchases or contracts:

(1) Contracts relating to theoretical analysis, exploratory studies, and experimentation in any field of science or technology;

(2) Contracts calling for the practical application of investigative findings and theories of a scientific or technical nature;

(3) The purchase of such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto, and drawings or designs thereof, as are necessary for experimentation, development, research, or test; and

(4) Services, tests, and reports necessary or incidental to experimental, developmental, or research work.

(b) In order for this authority to be used, the required determination to be made by the Commandant (or, in the case of contracts for \$25,000 or less, by the Comptroller), must be in accordance with the requirements of section 2 (c) (11) of the act. This authority shall not be used for contracts for the quantity production of items developed as the result of prior experimentation, development, research, or test; however, research or development contracts which call for the production of a reasonable number of experimental or test models, or prototypes, shall not be regarded as contracts for quantity production.

(c) Headquarters shall maintain a record of the name of each contractor with whom a contract has been entered into under this authority, together with the amount of the contract, and descrip-

tion of the work, and shall prepare and submit reports as required by the act.

§ 116.03-42 *Classified purchases (sec. 2 (c) (12)).* Pursuant to the authority of section 2 (c) (12) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (12)), purchases and contracts may be negotiated for supplies or services as to which the Commandant "determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed." This authority is restricted to Headquarters and shall be used only when military considerations necessitate security, and then only for such purchases or contracts as are classified as confidential or higher.

§ 116.03-43 *Technical equipment requiring standardization and interchangeability of parts (sec. 2 (c) (13)).* Pursuant to the authority of section 2 (c) (13) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (13)), purchases and contracts may be negotiated for equipment which the Commandant "determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interests." This authority is restricted to Headquarters and shall not be used until required determinations and findings have been made by the Commandant.

§ 116.03-44 *Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture (sec. 2 (c) (14)).* Pursuant to the authority of section 2 (c) (14) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (14)), purchases and contracts may be negotiated "for supplies of a technical or specialized nature requiring a substantial initial investment or an extended period of preparation for manufacture," as determined by the Commandant, "when he determines that advertising and competitive bidding may require duplication of investment or preparation already made, or will unduly delay procurement of such supplies." This authority is restricted to Headquarters and shall not be used until required determinations and findings have been made by the Commandant.

§ 116.03-45 *Negotiation after advertising (sec. 2 (c) (15)).* Pursuant to the authority of section 2 (c) (15) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (15)), purchases and contracts may be negotiated for supplies or services as to which the Commandant "determines that the bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition." This authority is restricted to Headquarters and shall not be used unless and until the Commandant has determined in accordance with the Act, that the bid prices, after advertising for such supplies or services, are not reasonable or have not been independently arrived at in open competition. However, after such

determination by the Commandant, and after a rejection of all bids, no contract shall be negotiated under this authority unless:

(a) Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by Headquarters Contracting Officer to each responsible bidder whose bid has been rejected; and

(b) The negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the Commandant; and

(c) The negotiated price is the lowest negotiated price offered by any responsible supplier.

§ 116.03-46 *Purchases in the interest of national defense or industrial mobilization (sec. 2 (c) (16)).* Pursuant to the authority of section 2 (c) (16) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (16)), purchases and contracts may be negotiated if the Commandant "determines that it is in the interest of the national defense that any plant, mine, or facility or any product manufacturer, or other supplier be made or kept available for furnishing supplies or services in the event of a national emergency, or that the interest either of industrial mobilization in case of such an emergency, or of the national defense in maintaining active engineering, research and development, are otherwise subserved." This authority is restricted to Headquarters. Headquarters shall maintain a record of the name of each contractor with whom a contract has been entered into under this authority, together with the amount of the contract and description of the work, and shall prepare and submit reports as required by the act.

§ 116.03-47 *Otherwise authorized by law (sec. 2 (c) (17)).* Pursuant to the authority of section 2 (c) (17) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (17)), purchases and contracts may be negotiated if "otherwise authorized by law." This authority is restricted to Headquarters, or to field units when specifically authorized by Headquarters, under authority of any other law which is presently existing or which may hereafter be enacted, relating to or authorizing negotiated purchases or contracts.

§ 116.03-48 *Architect-engineer professional services.* (a) Section 2 (c) (4) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (4)) normally shall be used as authority to negotiate architect-engineer professional services contracts only when all conditions have been satisfied. However, it will be noted that contracts which wholly or partially involve the procurement of personal service to be performed by the contractor, or by individuals named in the contract, will be entered into under the authority of section 15 of the act approved 2 August 1946 (60 Stat. 810; 5 U. S. C. 55a).

(b) During a period of national emergency when section 2 (c) (1) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (1)) has been authorized for use, the requirements of

paragraph (c) of this section are applicable even though the contract is negotiated under the authority of section 2 (c) (1) rather than section 2 (c) (4) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (1), (4)).

(c) When architect-engineer professional services are required by districts or Headquarters units, a request containing the following information shall be submitted to the Commandant:

(1) Itemization in detail as to the type and approximate duration of the services required;

(2) Explanation indicating why Coast Guard personnel (military and civilian) are not available to perform the desired services;

(3) A statement, in detail, explaining why the desired services to be performed by commercial concerns will be advantageous to the Government;

(4) Indicate the appropriation and subhead available for obligation to cover the contractual services; and

(5) Names and addresses of commercial concerns, located in and around the area where the services are to be required, who are recommended as being capable of performing the desired services.

Upon receipt of the request and the information outlined above, the Commandant will authorize the district commander or commanding officer, Headquarters unit to negotiate with the concerns recommended and with any other commercial concerns recommended by the Commandant.

(d) Each contract for architect-engineer professional services negotiated under authority of section 2 (c) (1) of the Armed Services Procurement Act of 1947 (41 U. S. C. 151 (c) (1)), and each supplemental agreement or change order making a material change in such contract will contain a provision stating that it is subject to the approval of the Commandant and will not be binding until so approved.

(e) Upon receipt of the executed contract at Headquarters for approval of the Commandant, the following action shall be taken by the cognizant office chief:

Prepare a memorandum requesting approval which will accompany the executed contract to the Commandant, which will refer specifically to the applicable statutory authorizations and will contain a complete statement of facts and a certificate substantially as set forth below to be made by the Commandant—

The proposed contract is advantageous to and necessary in the best interests of the Government; existing facilities of the Coast Guard are inadequate to accomplish the required services, and compensation specified therein is considered reasonable.

SMALL PURCHASE PROCEDURES

§ 116.03-55 *General.* (a) The following instructions are applicable to all small purchases as defined below. The various methods described herein are designed to facilitate, not replace, negotiated or advertised purchases. Further, these procedures will be implemented only at those units and in the manner

authorized herein. At no time will a small purchase procedure be employed to circumvent procurement by mandatory requisition, purchase, or contract methods.

(b) *Definitions.*—(1) *Small purchase.* Any transaction involving the purchase of supplies, equipment, or nonpersonal services which:

(i) Does not exceed \$1,000.00; and

(ii) Requires delivery of supplies or performance of nonpersonal services under a Federal Supply Schedule or an existing Coast Guard contract, or

(iii) Requires delivery of supplies or performance of nonpersonal services according to a buyer-supplier agreement without advertising. This, however, does not eliminate the need to obtain prices on a competitive basis.

(2) *Cash purchase.* Any small purchase as defined in subparagraph (1) of this paragraph which:

(i) Is accomplished by a single cash transaction not in excess of \$50.00; or

(ii) Is accomplished by c. o. d. shipments where the cost of the article or service purchased, money order fee, and the transportation cost does not exceed \$50.00.

(3) *Purchase order.* Form CG-2557, Purchase Order, which is prepared specifically to declare the intent of the Coast Guard to purchase (or confirm a Coast Guard purchase) a specific article or nonpersonal service from a given supplier at a given time.

(4) *Charge account.* An open credit account established by the Coast Guard with a supplier to be charged with the purchase of an unspecified number of articles or nonpersonal services during any calendar month.

(5) *Purchase-Invoice.* Form CG-2974 (Rev. 9-48), Purchase-Invoice, documenting the purchase, amount billed and paid, quantity of articles, or satisfactory service delivered, received, or rendered.

(6) *Petty Cash Voucher.* Form SF-1165, Receipt For Cash Subvoucher, documenting the cash payment for a purchase of services rendered or articles picked up, delivered, or shipped c. o. d.

§ 116.03-56 *Small purchases by district offices.*—(a) *General.* It is reasonable to anticipate that a significant number of items required to fill district demands may be obtained by the district office through small purchase transactions.

The repetitive demand for many of these, however, falls into a pattern permitting advance and planned solicitation of prices and placement of orders. All orders will be placed on those suppliers offering satisfactory items at the lowest price.

(b) *Use of purchase order.* When small purchases cannot be accomplished by either the cash purchase or the charge account method, as described in paragraphs (c) and (d) below, a purchase order will be issued under § 118.02-16 of this chapter.

(c) *Use of cash purchase.* Purchases described in paragraph (a) of this section which meet the criteria for cash purchase set forth in § 116.03-55 (b) (2), will be accomplished on a cash basis, as follows:

(1) SF-1165 will be prepared in quadruplicate and processed by the supply office to document payment for local pick-ups and deliveries.

(2) There are numerous opportunities for applying the cash purchase method to c. o. d. shipments from out of town suppliers. Whenever telephonic or telegraphic requests are necessary, no confirming order is required unless requested by the supplier. When Form CG-2982, Request For Quotation, is employed to solicit price and delivery information, a copy will be returned to the supplier as a delivery order directing c. o. d. shipment. At time of receipt of all c. o. d. shipments, SF-1165 will be prepared and processed.

(3) Cash advances may be made out of personal funds of the individual or by the ADO or Agent Cashier to designated supply personnel authorized to accomplish purchases. In the latter event, advances will not exceed \$50.00 per transaction. Designated supply personnel will not be required to be bonded in order to obtain an advance. Receipt will be obtained by the ADO or Agent Cashier on Stub SF-1165, Interim Receipt For Cash. Within 48 hours, such interim receipt will be redeemed upon presentation of receipted forms SF-1165 and/or unexpended funds aggregating the total amount advanced.

(4) In conjunction with purchase and pick-up at the supplier's establishment or c. o. d. delivery to the purchasing unit, the following distribution of the SF-1165 will be made:

(i) Original (including signature of vendor) and one copy will be surrendered to the ADO or agent cashier in accordance with subparagraph (3) of this paragraph.

(ii) The second copy will be retained by the supplier or carrier.

(iii) The third copy will be retained by supply office.

(d) *Use of charge account.* When purchases described in § 116.03-56 (a) not meeting the criteria for cash purchases, can be charged, a charge account will be established with all suppliers willing to cooperate. In such instances, an estimate of the monthly obligations, form CG-3089, Miscellaneous Obligation Document, will be prepared by the supply office at the beginning of each month and forwarded to the Accounts Section. The following action will be taken for each purchase:

(1) After the supplier offering the most advantageous buy to the Government has been determined, and it is further ascertained that a charge account has been established, the service is ordered or the merchandise is either picked up or delivered.

(2) At time of pick-up or delivery, or performance of service, one copy of supplier's sales slip, priced delivery ticket, or invoice, is receipted by Coast Guard and retained by supplier. A second copy, receipted by Coast Guard representative, is retained by the supply office. A third receipted copy is transmitted to the Accounts Section.

(3) On the last working day of the month, all outstanding receipted sales slips covering charged purchases will be clipped together and forwarded to the

Accounts Section. This unit will process for payment all the month's purchases.

§ 116.03-57 *Purchases by units with ADO's or agent cashiers attached.* All Headquarters units and units with ADO's or agent cashiers attached will effect planned purchases as described for district offices in § 116.03-56 of this chapter. The agent cashier at the Coast Guard Base, Alameda, will service the Supply Center, Alameda, for cash advances to accomplish cash purchases under this procedure.

§ 116.03-58 *Purchases by units without ADO's or agent cashiers attached—*
(a) *General.* Purchases by units in this category will be made only by Headquarters units and those district units authorized by the district commander. In such instances, funds must be set up in advance of purchase action by either (1) submission to Commandant (FA) of a periodic Miscellaneous Obligation Document by Headquarters units, or (2) forwarding to Accounts Section of periodic Miscellaneous Obligation Document by the supply office for authorized district units.

(b) *Use of purchase order.* Purchases at units not having ADO's or agent cashiers attached will be accomplished in accordance with the following instructions. As there is little opportunity for planned purchasing in any volume by units in this category, the use of formal quotation requests and purchase orders will be limited to a few instances in which the practice prescribed in § 116.03-56 (a) will be employed.

(c) *Use of purchase-invoice, Form CG-2974.* Except as provided in paragraph (a) of this section, purchases by units in this category will be accomplished through the use of the Purchase-Invoice, form CG-2974 (Rev 9-48). (The instructions on the jacket containing Purchase-Invoice forms are not applicable and are to be disregarded. The Purchase-Invoice will not be used as a stub requisition.)

(1) Purchases will be restricted to:

(i) Single transactions of \$25.00 or less.

(ii) Emergency requirements for items available from mandatory Coast Guard or other Government sources. In such cases, a complete explanation of the emergency will be entered on reverse of the form or attachment.

(2) Forms will be prepared in quadruplicate at time of purchase.

(3) Form will be signed in quadruplicate by:

(i) The commanding officer, the officer in charge of a unit, or designated representative will sign the Request For Delivery section of CG-2974 when form is prepared.

(ii) One of above authorized persons will sign certificate of receipt at time of purchase or delivery.

(iii) The vendor will sign certificate on reverse at the time of purchase or delivery.

(4) Form will be distributed in the following manner:

(i) Original white, blue and yellow copies will be forwarded to the same office as the Miscellaneous Obligation

Document under paragraph (a) of this section. The white and blue copies will be processed as an original invoice to be audited, and certified for payment on form CG-3092, Voucher and Schedule of Payment, and expenditure entries recorded in the Allotment Ledger, Expenditure Ledger, and controls. The yellow copy will be processed by the Supply Section. No obligation liquidation entries are necessary in view of the establishment of a continuing miscellaneous obligation document.

(ii) The salmon copy will be retained by the vendor. At the time the purchase is made, the vendor's copy, notwithstanding the instructions on the form relative to submission of certified bills, will be annotated in such a manner as to indicate that the signing of the certificate itself is the final action required of the vendor. The vendor should not submit additional billing.

CERTIFICATES OF AWARD

§ 116.03-70 *When certificates of award are required.* A Statement and Certificate of Award (Standard Form 1036, Revised) is not required for procurement by negotiation when the aggregate amount involved does not exceed \$1,000. A SF-1036 is required on larger negotiated contracts only when (a) the public exigency will not admit of the delay incident to advertising and (b) it is impracticable to secure competition by formal advertising.

§ 116.03-71 *Preparation and distribution.* The Statement and Certificate of Award shall be prepared and distributed in accordance with the instructions set forth in §§ 116.02-140 through 116.02-143.

SUBPART 116.04—ACQUISITION OF REAL PROPERTY ACQUISITION

§ 116.04-1 *Definition of general-purpose space.* The General Services Administration has defined general-purpose space as follows:

(a) Building space; record storage, supply depots, merchant marine inspection and recruiting stations, and repair shops (except when held under service contracts).

(b) Office space.

(c) Storage; garage space (when leased on an annual basis and the lease covers designated areas susceptible to use by other agencies or for other purposes) and warehouses (except those used for storage purposes hereinafter found to be special-purpose space).

§ 116.04-2 *Definition of special-purpose space.* The General Services Administration has defined special-purpose space as follows:

(a) Closed storage space required in combinations with piers, docking and mooring facilities.

(b) Wharfage (piers, docking and mooring facilities covered by lease).

(c) Plots of land (for aids to navigation structures).

(d) Space lease for no rental or for nominal consideration of one dollar (\$1.00 per annum).

(e) Port Security units (exclusive of separate office acquired for use of Cap-

tain of the Port, which space continues to be defined as general purpose space).

§ 116.04-3 Securing assignment of space in Government-owned buildings.

(a) Formal application for assignment of space in Government-owned buildings will be made to the controlling agency only by the Commandant through Treasury Department channels. Occupancy of such space shall be contingent on authorization by the Commandant (FS-2).

(b) Informal inquiry should be made of the custodians of local post offices and Federal buildings to determine availability of required office or storage space and if available, request should be forwarded to Commandant (FS-2) accompanied by GSA Form 81 in quintuplicate, supported by detailed justification.

(c) Request for additional space in a Government-owned or leased building or a change in assignment therein, shall be submitted to the Commandant (FS-2) in a manner similar to the foregoing. Headquarters authority shall be obtained prior to release of assignment in Government-owned buildings and formal return of the space assignment to the cognizant agency shall be effected by the Commandant (FS-2).

§ 116.04-4 Acquisition of privately owned land or facilities by permit or lease.

(a) The Coast Guard is obliged by law to utilize Government-owned facilities, if available, prior to acquiring privately owned property by permit or lease. Any proposal to acquire privately owned property by permit or lease shall be submitted to the Commandant (FS-2) accompanied by GSA Form 81, in quintuplicate.

(b) Execution of a formal lease contract is the proper method of acquiring use of real property of buildings thereon, in whole or in part, and is more preferable than by permit. Use of barges, boats, floats, scows, or floating facilities shall be legalized by Headquarters by charter upon submission of proposal and justification.

(c) Any proposal to lease real property shall be submitted to the Commandant (FS-2) on GSA Form 81 and if approved, the district commander will be authorized to execute the lease contract and be advised as to the appropriation and subhead chargeable with the rental.

(d) Prior to renewal of permits or leases, GSA Form 81, in quintuplicate, shall be forwarded to the Commandant (FS-2) for clearance. Upon authorization of Headquarters, the field units may renew permits or leases in accordance with the terms of such permits or leases; however, in each instance a copy of such notice of renewal shall be forwarded to the Commandant (FS-2).

§ 116.04-5 Submission of proposal to lease.

(a) Bids or quotations will be obtained and all conditions of Standard Form 2 (Lease) will be applicable to space obtained in other than the 128 urban centers listed herein. The original and one copy of all bids or quotations received shall be submitted to the Commandant (FS-2) with a recommendation for acceptance. When accept-

ance of other than the low bid or quotation is recommended, an explanation shall be furnished.

(b) Expenditure of funds for repairs, alterations, or improvements of a leased facility in excess of twenty-five per centum of the amount of the rental for the first year of the rental term, or for the rental term if for less than one year, is prohibited. If the annual rental of the facility proposed for lease is \$2000 or more, evidence that the rental is not in excess of 15 per centum of the fair market value of the rented premises will be required. Determination of the fair market value of the proposed space will be established by the execution of Form CG-2877 (Determination of Fair Market Value of Real Estate) and shall be submitted in quintuplicate to Commandant (FS-2) accompanying and in support of the proposal to lease. Estimates in connection with proposed repairs, alterations or improvements shall be prepared in cooperation with Chief, Civil Engineering Section.

(c) Proposals to lease submitted to Headquarters shall include a definite statement of the purpose for which the space to be used and designation of the units accommodated; the number of persons who will occupy it, whether continuously or intermittently; the total area in terms of square feet; and number of rooms. A preliminary draft of the proposed lease on Standard Form 2 (Lease) in duplicate shall be submitted with proposal. If the proposed space is to be used for offices and other purposes, the proportion of each shall be stated, indicating the square feet to be devoted exclusively to nonworking space, such as file rooms, storage rooms, conference rooms, display rooms, etc.

§ 116.04-6 Drafting and executing leases.

Upon receipt of Headquarters authorization to execute a lease, the lease shall be drafted on Standard Form 2 (Lease) in accordance with the preliminary draft returned by Headquarters. Certain additional revisions shall be made to this form to further protect the interests of the Government, viz:

(a) The word "exclusively" in article 2 shall be deleted and only general terms shall be employed to indicate the intended use of the facility, such as office quarters or storage space.

(b) A clause substantially as follows shall be added as article 12 of the lease:

Covenant against contingent fees. Contractor warrants that he has not employed or retained any person or selling agency to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach of warrant the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commissions payable by contractor to his bona fide, regular employees, or to bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

(c) An additional article 13 shall be added reserving to the Government the

right to effect cancellation of the contract by giving the lessor thirty (30) days written notice.

(d) If the lessor is a corporation, a corporate certificate and corporate seal will be an essential. If the lessor is a partnership or unincorporated society, authority of the individual to sign in its behalf shall be furnished as an inclosure supporting the lease.

(e) The notice from the lessor requiring restoration of the premises, as executed in article 8 of the lease shall be ten days less than the cancellation period designated in article 13 of the lease.

(f) All leases submitted to the lessor for execution shall contain the clause relative to nondiscrimination in employment.

§ 116.04-7 Numbering, distribution and filing of leases.

Instructions pertaining to the numbering, distribution and filing of leases are contained in Subpart 118.02 of this chapter.

§ 116.04-8 Acquisition of general-purpose and special-purpose space.

(a) The Coast Guard will not be required to enter into negotiations for the renewal of leases governing general-purpose space in any of the urban centers indicated below. For all requests for additional general-purpose space, and new leases, including renewals, the district office or Headquarters unit shall submit a request for space action to the Commandant (FS-2) on GSA Form 81 in quintuplicate before any action is taken. Clearance by General Services Administration is not required for general purpose space of 2500 square feet or less in cities outside of urban centers indicated:

GSA field office	State	City
Region No. 1: 620 Post Office and Court- house Bldg., Boston 9, Mass.	Connecticut.....	Bridgeport, Hartford, New Haven.
	Massachusetts.....	Boston, Lowell, Lynn, New Bedford, Springfield, Worcester.
	New Hampshire.....	Manchester.
	Rhode Island.....	Providence.
Region No. 2: 250 Hudson St., New York 13, N. Y.	Delaware.....	Wilmington.
	New Jersey.....	Camden, Newark, Trenton.
	New York.....	Albany, Buffalo, New York City, Rochester, Syracuse.
	Pennsylvania.....	Allentown, Harrisburg, Philadelphia, Pittsburgh, Reading, Scranton, Wilkes-Barre, Washington.
Region No. 3: Federal Supply Bldg., 7th and D Sts. SW, Washington 25, D. C.	District of Columbia.....	Baltimore.
	Maryland.....	Alexandria, Arlington, Lynchburg, Norfolk, Richmond, Roanoke.
	Virginia.....	Huntington.
	West Virginia.....	Birmingham, Montgomery, Tuscaloosa.
Region No. 4: 303 Federal Annex, Atlanta 3, Ga.	Alabama.....	Jacksonville, Miami.
	Florida.....	Atlanta, Columbus, Macon, Savannah.
	Georgia.....	Jackson.
	Mississippi.....	Charlotte, Greensboro, Raleigh, Winston-Salem.
	North Carolina.....	Columbia, Greenville, Spartanburg.
	South Carolina.....	Chattanooga, Knoxville, Nashville, Memphis.
	Tennessee.....	

GSA field office	State	City
Region No. 5: 128 U. S. Courthouse Bldg., Chi- cago, Ill.	Illinois.....	Aurora, Chicago, Springfield, Wau- kegan.
	Indiana.....	Indianapolis, South Bend.
	Kentucky.....	Lexington, Louis- ville.
	Michigan.....	Detroit, Grand Rapids, Lansing.
	Ohio.....	Akron, Canton, Cincinnati, Cleveland, Co- lumbus, Dayton, Toledo, Youngs- town.
	Wisconsin.....	Madison, Mil- waukee.
	Iowa.....	Council Bluffs, Des Moines, Sioux City.
	Kansas.....	Kansas City, To- peka, Wichita.
	Minnesota.....	Minneapolis, St. Paul.
	Missouri.....	Kansas City, St. Joseph, St. Louis, Springfield.
Region No. 6: 2100 Fidelity Bldg., Kansas City 6, Mo.	Nebraska.....	Lincoln, Omaha.
	North Dakota.....	Fargo.
	Arkansas.....	Little Rock.
	Louisiana.....	New Orleans, Shreveport.
	Oklahoma.....	Oklahoma City.
Region No. 7: 1114 Com- merce St., Dallas 2, Tex.	Texas.....	Austin, Beaumont, Corpus Christi, Dallas, El Paso, Fort Worth, Gal- veston, Houston, San Antonio, Waco.
	Colorado.....	Denver.
	New Mexico.....	Albuquerque.
	Utah.....	Salt Lake City.
	Arizona.....	Phoenix.
Region No. 8: 476 New Que- bec House Bldg., Denver 2, Colo.	California.....	Fresno, Los An- geles, Oakland, Sacramento, San Diego, San Fran- cisco, Santa Bar- bara.
	Idaho.....	Boise.
	Montana.....	Billings, Butte, Great Falls.
	Oregon.....	Portland.
	Washington.....	Everett, Seattle, Spokane, Ta- coma, Yakima.
Region No. 10: 123 New Court House Bldg., Seattle 4, Wash.	Idaho.....	Boise.
	Montana.....	Billings, Butte, Great Falls.
	Oregon.....	Portland.
	Washington.....	Everett, Seattle, Spokane, Ta- coma, Yakima.
	Idaho.....	Boise.

(b) Activities contemplating the acquisition of special-purpose space, or general-purpose space in locations outside the selected 123 urban centers listed above and definitions of space previously cited shall forward to the Commandant (FS-2) GSA Form 81 "Request For Space" (original and four copies) with estimated rental inserted in block 27 of the form. GSA Form No. 81 shall be cleared through the Regional Office of the General Services Administration by field activities prior to submission to Headquarters. If the acquisition is approved, the district commander or the commanding officer, Headquarters unit, will be instructed to solicit bids.

§ 116.04-9 *Definition of urban centers.* The General Services Administration has defined urban centers as follows:

- Geographical boundary lines of the named urban centers;
- Geographical boundary lines of cities, towns or villages adjoining (a) above; and
- Geographical boundary lines of cities, towns or villages adjoining (b) above.

§ 116.04-10 *Cancellation of leases.* When it has been determined that a leased facility is no longer required, request for authority to cancel shall be submitted to the Commandant (FS-2) for approval prior to issuance of cancel-

lation notice. Upon receipt of notice to cancel, cancellation notices shall be issued to the lessor sufficiently in advance of the effective date thereof to permit the accomplishment by the Government of any restoration required under article 8 of the lease. Two copies of the notice of cancellation shall be forwarded to the Commandant (FS-2) concurrent with issuance to the lessor.

PRINCIPLES GOVERNING LEASING OF REAL PROPERTY

§ 116.04-15 *Background.* During World War II, the Coast Guard, as well as the other armed services, was required to provide housing and messing facilities to accommodate a tremendously increased personnel. A large part of this space was acquired by lease, utilizing existing buildings of one sort or another, for barracks, mess halls, offices, etc. Speed was of the essence, and as a result, too little thought was given to the physical condition and suitability of the property under consideration and to the terms under which it was leased. When these properties were returned to their owners, many controversies arose in connection with final settlements and in many cases the Coast Guard was put to unnecessary expense in making restoration. These instructions are issued with a view toward eliminating these errors and expenses insofar as is possible in the event conditions again require a rapid expansion of personnel. They do not cancel or supersede any regulations now in force relative to the leasing of property.

§ 116.04-16 *Classification of property.* Leased properties naturally fall into two classes: (a) Unimproved land on which Coast Guard is to erect buildings of some sort and (b) Improved property such as warehouse, hotel, motel dwelling, etc., which is suitable for Coast Guard use as is, or with more or less alterations. Since these two classes involve entirely different problems, they will be dealt with separately. Geographical location, as well as other conditions peculiar to each individual case, will determine which type of property is the more suitable.

§ 116.04-17 *Considerations for leasing land.* In the event that land only appears indicated at first, the following points should be considered very carefully before any negotiations for a lease are commenced:

- If buildings will be required for the proposed Coast Guard unit, exhaust thoroughly any possibility of finding a structure which would be satisfactory even though it may not be in the exact location originally chosen, or the size desired. Erection of buildings for temporary use is expensive, particularly in labor and material, both of which may again become critically scarce.
- If it is determined that no existing structure can be used, investigate the following carefully:

(1) *Topography.* Is the area on or near swampy ground which might prove to be mosquito breeding, or otherwise unhealthy? Is it level or will it require extensive grading? If commercial water supply is not available, are there indications that potable water may be secured

by a reasonably shallow well? If a local supply of potable water is out of the question and it must be imported, is water—fresh or salt—available for sanitary purposes? Is the slope of ground and type of soil suitable for a septic tank drainage field?

(2) *Location.* Is the area adjacent to a road, highway or other means of access, or must additional right-of-way be secured and access road be built? Is the area adequate not only for immediately planned construction, but also for a moderate expansion, if necessary?

§ 116.04-18 *Considerations for leasing improved property.* If possible, it is desirable from the standpoint of speed and conservation of labor and materials, to lease improved property in every case where there is available a building or buildings which are suitable for Coast Guard use or which can readily be made usable. These buildings may be in the form of warehouses or lofts when only storage or shop space is required, hotels or motels where housing and messing of personnel is required, or even private dwellings in cases where only a limited number of personnel will be assigned. In any event, the same precautions should be taken in order to assure adequate facilities. The following factors should be examined carefully in considering the leasing of any building:

- Construction.* Is the floor construction adequate for any anticipated load? Is the wall and roof construction sufficient to withstand local storm conditions? Will extensive repairs, such as flooring, plastering, window replacement, roof repairs, etc., be required to make it suitable for Coast Guard use? Are the necessary utilities (water, gas, electricity, sewer) installed and of adequate capacity for the anticipated use?
- Adaptability.* Can the building be used as it exists or must alterations, minor or extensive, be made? Is its location suitable for the use intended or will excessive transportation of personnel and supplies be required?
- Cost.* What is the yearly or monthly rental? Consider this rental in connection with the cost of any repairs or alterations which must be made as against the cost of renting vacant land and erecting the necessary buildings. Regulations do not permit a yearly rental in excess of 15 percent of the fair market value of the property. Such valuation may be determined by securing an appraisal by the local assessor, or by determining the assessed valuation of the property and the percentage of actual value which is used locally in making assessments. Data obtained on valuation of the property must accompany the original request to the Commandant (FS-2) for a lease.

§ 116.04-19 *Preliminary negotiation.* In the event that, all factors having been considered, the leasing of an existing building appears most feasible, the building itself is chosen with those items mentioned in § 116.04-18 in mind. Negotiations with the owner should have as their aim a reasonable rental to the Coast Guard within the limits prescribed by regulations and a fair return to the owner. Before entering into

these negotiations, the terms of Standard Lease Form No. 2 should be studied carefully and no promises or commitments made to the owner which will not be confirmed by an executed lease contract. Avoid promises which cannot be legally or reasonably fulfilled. This is very important, since restoration of the property will of necessity be made strictly in accordance with the terms of the lease and any additional promises made at the outset would only embarrass the Coast Guard when the lease is terminated and it is found to be impossible to fulfill these promises. Leases will, in most cases, be drawn up by the Districts, sent to HQ for approval and returned to the Districts for execution. For this reason be sure that all necessary information is furnished the Commandant (FS-2) with the original submission of lease. This information should include:

(a) Precise and detailed statement of operational requirement for the property.

(b) Statement as to the degree to which the property meets the operational requirements as stated above.

(c) Plot plan, vicinity map, description of land and/or buildings.

(d) Satisfactory evidence of lessor's title to the property.

§ 116.04-20 Leasing buildings without furnishings. If at all possible, buildings should be leased without furnishings, personal property, or other mobile equipment. Such items are usually not adapted to Coast Guard use, and past experience has shown that many of the difficulties of restoration involve disagreements regarding the condition in which furniture is returned to the owner. When possible, the movable contents of a leased building should be removed by the owner and stored by him. Owner should make allowance for such expenses in the rental agreed upon. Storage by the Coast Guard either on or off the property will not solve this problem since the furnishings will still be in Coast Guard custody as much as if they were being used and the same disagreements will unquestionably arise at the termination of the lease.

§ 116.04-21 Physical survey required. Before taking possession of the property, a detailed physical survey of the building must be made jointly by the owner and a representative of the Coast Guard. Every portion of the building is to be covered as a separate item and any defect existing at the time of entry by Coast Guard noted clearly and in detail. Only in this way will it be possible at the time of restoration to determine exactly what, if any, damage was caused by Coast Guard occupancy. A sample excerpt from such an inventory might be as follows:

Room 10:

- a. Plaster crack 1/4" wide, 2' long in upper S. corner of W. wall and 4' long SW corner ceiling.
- b. Nail holes in door casing.
- c. 2 window panes cracked.
- d. Floor bare of paint in numerous areas.

Room 11:

- a. Approximately 2 sq. ft. plaster off S. wall.
- b. Sash lock in window broken and sash lift missing.
- c. Door lock broken.

Pictures should be taken of areas where damage exists and is difficult to describe; be sure the pictures are properly identified. The basement should be treated as a separate item as well as the roof, the exterior of the building, the utilities, grounds, dock, etc., as applicable. The completed physical inventory of the building is to be signed jointly by Coast Guard and owner under a date not later than the effective date of lease. Immediately prior to date of execution of lease, also upon termination of lease, arrangements should be made to have photographs made and properly identified, showing areas where damage exists, where it is impossible to describe it adequately. "Before and after" photographs of the exteriors of the buildings should also be taken. This will serve to shorten considerably the proceedings of restoration boards when the leases are terminated.

§ 116.04-22 Inventory of furnishings. If it should be necessary to lease the building furnished or partially furnished, a similar detailed inventory of the furniture, rugs, drapes, etc., is to be made, preferably by an experienced appraiser. Condition, apparent defects and value should be noted for each item, the item identified by a number affixed thereto, and the whole agreed to by owner.

§ 116.04-23 Remodeling, repairing and altering. After the lease has been negotiated and possession taken by Coast Guard, the question of remodeling, repairing, altering, etc., arises. It should be borne in mind constantly that, in signing the lease, the Coast Guard has agreed to return the property to the owner in the same condition as when leased, "ordinary wear and tear excepted." In other words, any structural changes made by the Coast Guard will involve expensive restoration later. Thus alterations should be limited to those which are absolutely essential and which will not impair the structural strength of the building itself for Coast Guard use. Repairs should be made as required for safety and a reasonably presentable appearance. Any painting done should be insofar as is practicable in agreement with the owner as to color and type of paint, and his signed concurrence obtained if possible and filed with the original inventory before the work is done. Present statutory regulations prohibit expenditure of over 25 percent of first year's rent for repairs or alterations.

§ 116.04-24 Damages and restoration. Needless to say, any damage to the buildings, furnishings, grounds, etc., caused by carelessness, neglect, or mis-use will be reflected in excessive restoration costs at the conclusion of the lease. It is therefore necessary that constant supervision be exercised to insure that the "wear and tear" on the property is not excessive. Some of the most common preventable items requiring restoration as a result of World War II occupancy of leased properties were:

- (a) Cigarette burns on floors, rugs and furniture.
- (b) Pictures nailed or scotch-taped to walls.
- (c) Broken plaster.

(d) Careless use of furniture.

(e) Painting with "battleship gray" paint, rather than existing colors or colors satisfactory to owner.

(f) Nails driven into walls for clothes hangers.

(g) Careless handling in storage of window screens when not in use, or of furniture when stored on the property by Coast Guard.

(h) Alterations made to buildings when not absolutely required.

(i) Changes in electrical wiring resulting in unsafe conditions.

(j) Neglect in upkeep of grounds, walks, utilities.

§ 116.04-25 Planning for future requirements. The Coast Guard use of leased properties in the future may be negligible, but at the same time conditions requiring widespread use of such facilities may arise. Careful planning and supervision such as is outlined herein will cause little or no delay in occupying the buildings but will do much to prevent a repetition of the unreasonably high restoration costs experienced after World War II. Careful planning now before the possible need arises, in the matter of tentative selection of possible buildings and locations will expedite the establishment of the units should the need arise.

PART 118—CONTRACTS

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Subpart 118.03—Contract Clauses

- 118.03-1 Terms, conditions and provisions to be incorporated in contracts.
 118.03-2 Standard clauses for fixed price contracts executed on SF-33.
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 118.03-5 Special contract clauses.

Subpart 118.04—Administrative Instructions RENEGOTIATION ACT OF 1951

- 118.04-1 Renegotiation Act of 1951; administration.

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- 118.04-4 Affidavits required by Copeland ("Kickback") Act.

CONTRACTOR'S STATEMENT OF CONTINGENT OR OTHER FEES

- 118.04-8 Purpose.
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 118.04-11 Covenant against contingent fees.
 118.04-12 Representation and agreement required for prospective contractors.
 118.04-13 Standard Form 119, contractor's statement of contingent or other fees.
 118.04-14 Acceptance or rejection.

PROCEDURES FOR HANDLING ASSIGNMENTS OF CLAIMS

- 118.04-18 Assignment of claims.

Authority: §§ 118.01-1 to 118.04-18 issued under 62 Stat. 21, 41 U. S. C. 151-161. Interpret or apply secs. 201, 206, 63 Stat. 378, 390, as amended, 65 Stat. 7; 40 U. S. C. Sup. 481, 487, 50 U. S. C. App. Sup. 1211-1223, E. O. 10260, 16 F. R. 6271; 3 CFR, 1951 Supp. 63.

SUBPART 118.01—GENERAL PROVISIONS

§ 118.01-1 *Forms of agreement.* All contractual obligations shall be recorded on a separate award type contract, a combination award type contract, or a purchase order (informal contract).

§ 118.01-2 *Separate award type contract.* (a) The separate award type (or "long form") contract contemplates the reduction of an agreement to a single written document signed by both parties at the end thereof, which is drawn and prepared after acceptance of bids or quotations. Bonds, drawings, specifications, conditions, and/or other relevant papers are incorporated as necessary.

(b) Separate award type contracts used by the Coast Guard include, but are not restricted to, the following:

- (1) Standard Form 2, Real Estate Lease.
- (2) Standard Form 23, Construction Contract.

(3) Standard Form 40, Contract for Telephone Service.

(4) Standard Form 41, Standard Government Form of Contract (Coal).

(5) Unnumbered form, Standard Coast Guard Contract for Professional Services.

(c) Separate award type contracts other than those listed above may be executed only by the Commandant (FS-1) or when directed by the Commandant.

§ 118.01-3 *Combination type contract.*

(a) The combination type (or "short form") contract consists of the invitation for bids, the bid, and the award, contained in one instrument. Bonds, drawings, specifications, conditions, and/or other relevant papers are incorporated as necessary.

(b) Standard Form 33 (Invitation, Bid, and Award) is the only combination type contract used by the Coast Guard.

§ 118.01-4 *Purchase orders (informal contracts).*

(a) Form CG-2557 (Purchase Order) may be used as a contractual agreement for procurement by negotiation when the transaction does not exceed \$2,000 and does not require the use of a contract form. Drawings, specifications, conditions, and/or other relevant papers are incorporated as necessary.

(b) Each contractor to whom a purchase order (informal contract) is issued will be required to indicate his acceptance thereof as prescribed in § 118.02-16.

§ 118.01-5 *Definition of specific contracts.* A specific contract is an agreement to furnish a stated item, at a specified time, in a definite quantity and at a price agreed upon and set forth in the contract, which items must, in the absence of mutual agreement as to modification, be accepted and paid for by the Government.

§ 118.01-6 *Definition of term contracts.*

A term contract is an agreement to furnish certain articles or services as may be required during a stated period of time, or involving multiple deliveries in stated quantities, over a period of time. Term contracts shall clearly show the interval of time covered by the contract, such as 1, 2, 3, 6, 9, or 12 months. Term contracts shall not extend beyond the end of a fiscal year. Items covered by term contracts must be purchased from the contractor and duplicating contracts with other firms for the same items shall not be executed.

§ 118.01-7 *Expiration of contracts.*

(a) A specific contract expires when the quantity stipulated therein has been delivered. When a contract has been made for a specific quantity and it later develops that the quantity contracted for is insufficient, additional quantities cannot be purchased under the existing contract and the execution of a new contract is required.

(b) Term contracts shall avoid indicating a "maximum" quantity to be furnished. An "estimated" or "approximate" quantity should be shown in order to avoid termination of the contract prior to the expiration of the contract

period. Term contracts do not expire when the "estimated" or "approximate" quantity is reached unless a "maximum" quantity has been fixed by the contractor and is stipulated in the contract.

§ 118.01-8 *Legality of contracts.* If any doubt arises as to the propriety or legality of entering into a contract, all proposals shall be forwarded to the Commandant (FS-1) for decision, with a letter setting forth the problems involved. In case of emergency, the question may be submitted by dispatch.

§ 118.01-9 *Award of contracts in anticipation of funds.* It is unlawful to enter into a contract in anticipation of funds. However, term contracts for future requirements may contain a qualifying clause stating the contract is subject to the availability of appropriated funds if agreeable to the contractor. Purchase orders for delivery under such contracts shall not be placed until funds are made available.

§ 118.01-10 *Execution of term contracts.* Coast Guard contracting officers are authorized to execute term contracts to cover an extended period of time for furnishing provisions, fuels, ice, water, garbage removal service and other materials and services of common, general use, that readily lend themselves to consolidated procurement.

§ 118.01-11 *Term contracts for repairs to vessels.* The execution of term contracts for repairs to vessels is authorized when deemed advantageous by the contracting officer. Term contracts should be executed only at units to which numerous vessels of similar characteristics, which require frequent hauling out and minor repair work, are attached. The use of term contracts is restricted to minor repair work on vessels not larger than 125 feet in length. Work on larger vessels and all major overhaul and repair work shall be the subject of specific contracts.

§ 118.01-12 *Contract bulletins.* Information bulletins covering term contracts executed by a Coast Guard contracting officer shall be promptly furnished to all units which may make use of such contracts. The bulletins shall be in sufficient detail to permit settlement of vouchers and shall cite contract numbers, date of the contract, name and address of the contractor, delivery points and delivery conditions, items and prices, applicable discounts, and code symbols relating to sources of procurement and circumstances governing procurement. District commanders shall also furnish information covering contracts executed by other Government agencies which are available for Coast Guard use to all district units which may make use of such contracts.

§ 118.01-13 *Appropriation chargeable to be cited in the contract.* All specific contracts shall clearly indicate the appropriation, allotment and/or fund chargeable with the cost of the work. This information shall be stated in the contract and on all change orders issued in connection with the contract.

§ 118.01-14 *Notification of contract awards to Department of Labor.* (a) Department of Labor Form 99, Notice of Award of Contract, shall be prepared and submitted in quadruplicate to the Department of Labor whenever a contract is executed by a Coast Guard unit for manufactured items in the amount of \$10,000 or more. This form may be obtained from local branch offices of the Department of Labor or from the Commandant (CHS).

(b) The Commandant (ECV) shall prepare and furnish Department of Labor Form BLS-792, Construction Contract Award Notification, to the Department of Labor for all construction contract awards of \$25,000 or more for both Headquarters and field units.

§ 118.01-15 *Maintenance and use of the contract register.* (a) Each unit (contracting officer) assigning contract numbers shall maintain a Contract Register, Form CG-3252, to control the sequence of serial numbers assigned to contracts, and for the purpose of accumulating information as a basis for rendering reports. The Contract Register shall be maintained in duplicate.

(b) At the close of each month the duplicate copy of the Contract Register shall be ruled off and signed by the contracting officer in the manner indicated by the specimen. The completed duplicate shall be forwarded to the Commandant (FS) in time to be received by the 10th of the following month. The original of the Contract Register shall be retained in the unit for the files of the contracting officer. The original need not be ruled off or signed.

§ 118.01-16 *Contracts to be executed by the commandant.* (a) All contracts for the construction of vessels, as distinguished from repairs to vessels, shall be executed by the Commandant (FS-1).

(b) All contracts for amounts in excess of the monetary limitations specified in § 116.01-6 of this chapter shall be executed by the Commandant (FS-1) or under the direction of the Commandant.

(c) Contracts negotiated under circumstances requiring Headquarters' action as set forth in Subpart 116.03 of this chapter shall be executed by the Commandant (FS-1).

§ 118.01-17 *Contracts requiring numbering.* The following types of contracts shall be numbered in accordance with the uniform system prescribed in § 118.02-4:

- (a) Every contract involving, or likely to involve, an amount of \$2,000 or more;
- (b) All term contracts;
- (c) All contracts which involve more than one payment, or which involve partial payments;
- (d) All leases;
- (e) All sales contracts.

§ 118.01-18 *Units not authorized to execute or number contracts.* Bids or quotations solicited by units not authorized to execute contracts or assign contract numbers shall be transmitted to the cognizant District Commander (f), or to the Commandant (FS-1) in the case of Headquarters units, for acceptance and assignment of a contract number. The original and three copies of each

bid or quotation shall be forwarded with a letter containing the necessity for the contract; place or places where notices to bid were posted; the names of the dealers from whom bids or quotations were solicited; recommendation as to award; and adequate justification if lowest bid is not recommended for acceptance.

SUBPART 118.02—FORMS PREPARATION AND DISTRIBUTION

§ 118.02-1 *Separate award type contracts.* (a) Leases of real property shall be executed on Standard Form 2, Real Estate Lease.

(b) Construction and repair contracts (vessels and real property as defined in § 118.03-3) for amounts of \$2,000 or more (or lesser amounts at the discretion of the contracting officer), and contracts involving the use of bonds, shall be executed on Standard Form 23, Construction Contract.

(c) Contracts for telephone service shall be executed on Standard Form 40, Contract for Telephone Service.

(d) Coal contracts shall be executed on Standard Form 41, Standard Government Form of Contract (Coal), except under the following conditions when Standard Form 33, Invitation, Bid and Award, or Form CG-2557, Purchase Order, may be used:

- (1) When required for marine use.
- (2) When purchase is for 300 tons or less.
- (3) When deliveries are required in less than carload lots.
- (4) When required for emergency use.
- (5) When required for testing purposes.

(e) Contracts for architect-engineering professional services shall be executed in substantially the same form as the specimen Contract for Professional Services contained in Vol. 3 of the Comptroller Manual.

§ 118.02-2 *Combination type contracts.* (a) Supply contracts made by advertising, and contracts for the construction and repair of aircraft and aids to navigation, shall be executed on Standard Form 33 (Invitation, Bid and Award).

(b) Standard Form 33 (Invitation, Bid and Award) may be used for the execution of the following contracts resulting from either negotiation or advertising:

- (1) Nonpersonal services.
- (2) Utility services.
- (3) Solid fuels.
- (4) Construction, alteration, maintenance, or repair of public works, buildings, bridges, roads, or other real property, provided the contract does not exceed \$2,000 and does not require the use of bonds.

(5) Construction, alteration, maintenance, or repair of ships, craft, boats, vessels, and other floating equipment, such as, but not limited to, floating drydocks, cranes, barges, and the like, provided the contract does not exceed \$2,000 and does not require the use of bonds.

§ 118.02-3 *Purchase orders (informal contracts).* Purchase orders (Form CG-2557) may be used as a contractual agreement for procurement by negotia-

tion when the transaction does not require the use of a contract form and does not involve the use of bonds.

§ 118.02-4 *Uniform contract numbering system.* The uniform system prescribed for assigning identifying serial numbers to contracts shall be as follows:

(a) The contract number shall consist of a series of letters and digits in sequence, i. e., T12cg-8.

(b) The contract number shall be prefaced by the capital letter "T" which identifies the contract as pertaining to the Treasury Department.

(c) The allotment administrative code number of the unit which assigns the contract number shall be shown immediately following the letter "T" thus, the numeral "12" used in the example identifies the 12th CG District.

(d) The small letters "cg", which identify the contracts as pertaining to the Coast Guard, shall be shown immediately following the allotment administrative unit code number.

(e) The small letters "cg" shall be followed by a dash and the serial number of the contract; thus, the numeral "8" used in the example identifies the 8th contract assigned a number by the 12th CG District. Contracts shall be numbered serially in unbroken sequence by each unit authorized to assign contract numbers, commencing with No. 1 and continuing until a limit of five digits (99,999) has been reached, when a new series will be used, commencing with No. 1.

(f) Contract numbers shall be assigned at those administrative allotment units only to which an officer is assigned who has delegated authority under § 116.01-24 of this chapter to act as contracting officer.

§ 118.02-5 *Amendments to contracts.* Amendments to contracts shall be issued in the form of a "Change Order." Change orders will be prepared on Form CG-3473, completed to show all the information required by the format of the form, and must be signed by the contracting officer as designated in the contract. (See §§ 116.01-24, 116.01-25, and 116.01-144 of this chapter.) Copies of change orders will be furnished all units receiving distribution of the basic contract.

§ 118.02-6 [Reserved.]

§ 118.02-7 *Special contract conditions.* Special contract conditions, when required in connection with a contract, in addition to the standard articles incorporated in the printed contract form, shall be incorporated in the contract by reference and/or attachment thereto. The conditions shall be incorporated in the contract in a manner substantially as follows:

Subject to the conditions of Form ---- (or, Articles ---- of Form ----) attached hereto and forming a part of this contract.

§ 118.02-8 *Rejected proposals (bids and quotations.)* (a) The original of each rejected proposal shall be attached to the copy of the related contract retained for the contracting officer's files.

Where all bids and quotations are rejected and no award is made, the original of each rejected proposal shall be filed with the related request for bid under which the proposals were received.

(b) Copies shall be returned to the unit submitting the proposals for acceptance.

(c) The unit submitting proposals for acceptance shall notify unsuccessful bidders of the rejection of their bids.

§ 118.02-9 Contract files. Contracts made as the result of advertising, and negotiated contracts relating to public exigency, purchases not in excess of \$1,000, for personal or professional services, for services rendered by educational institutions, and for supplies or services procured and used outside the limits of the United States and its possessions, shall be filed, together with all related data, for a period of not less than three years from date of final payment of the contract. All other types of contracts made as the result of negotiation shall be filed, together with all determinations, decisions, findings, and related data, for a period of not less than six years from date of final payment of the contract.

§ 118.02-10 Distribution of numbered contracts. Numbered contracts and change orders, executed by designated contracting officers, shall be distributed as follows by the contracting officer:

(a) Original, with original Standard Form 1036 and related bonds, shall be forwarded to the Coast Guard office indicated below for filing:

(1) Contracts executed at Headquarters shall be forwarded to the Commandant (FA).

(2) Contracts executed at district offices shall be forwarded to the Comptroller Division, Accounting Section, of the district office to which the contracting officer is attached.

(3) Contracts executed at Headquarters units shall be forwarded to the accounting office performing the off-site accounting service for the unit. If Headquarters is performing the off-site accounting service, the contracts shall be forwarded to the Commandant (FA).

(b) One copy to the contractor. This copy shall be forwarded via the organizational unit submitting the proposal for acceptance.

(c) One copy retained for the files of the office (division or section) to which the contracting officer is attached.

(d) One copy to organizational unit submitting the proposal for acceptance. This unit will forward copies to the inspector and others requiring copies as necessary.

(e) One copy to the Commandant (ECV) if the contract pertains to the construction or repair of shore structures.

(f) One copy to the Commandant (FS-2) if the contract is a lease or renewal thereof.

(g) If the contract requires performance and payment bonds, the original of such bonds, together with related executed contract, shall be forwarded by the contracting officer to the Commandant (CL) for examination and transmittal of the bonds to the Treasury Department, Section of Surety Bonds, for review in accordance with Treasury Department Circular 747, dated August 10, 1944. After completion of this examination and review, the bonds, together with the original executed contract, will be returned to the office from which received for filing as prescribed above. A copy of the letter of transmittal to the Commandant (CL) shall be furnished the Accounting Division, or Section, for information and use pending the return of the original contract and related documents.

§ 118.02-11 Distribution of unnumbered contracts. Unnumbered contracts executed by designated contracting officers shall be distributed as follows by the contracting officer:

(a) Original, with original Standard Form 1036, when required, to the unit which will prepare the voucher for payment, to be attached to the original voucher as support.

(b) One copy to the contractor. This copy will be forwarded via the organizational unit submitting the proposal for acceptance.

(c) One copy retained for the files of the office (division or section) to which the contracting officer is attached.

(d) One copy to organizational unit submitting the proposal for acceptance. This unit will forward copies to the inspector or others requiring copies as necessary.

§ 118.02-12 Purchase order Form CG-2557. Form CG-2557, Purchase Order, shall generally be used for commercial purchases.

§ 118.02-13 Purchase-invoice Form CG-2974. Under such instructions as may be prescribed by District Commanders and commanding officers of Headquarters units, Form CG-2974, Purchase-Invoice, may be used as a purchase order by persons in charge of vehicles, aircraft, and small boats while (a) on detached duty, (b) en route to new stations, and (c) in emergencies during normal operations. The instructions contained on the cover sheets of Form CG-2974 shall be strictly complied with.

§ 118.02-14 Classes of purchase orders. There are two classes of purchase orders:

(a) When the article is covered by an existing contract and the purchase order is, in fact, a request for delivery. In this case the purchase order cites reference to the existing contract and no additional conditions can be imposed.

(b) When the order is placed as the result of a negotiated purchase and the purchase order is, in fact, the contractual agreement. In this case the conditions under which the purchase is made and delivery will be accepted shall be incorporated in the order.

§ 118.02-15 Use of purchase orders.

(a) A purchase order shall be used to cover every purchase, including confirmation of orders placed by telephone or telegraph and requests for delivery under term or specific contracts. A purchase order prepared in confirmation of a telephone or telegraph order must bear the same date as the telephone or tele-

graph order. The purchase order issued in confirmation of a telephone order should contain a notation substantially as follows:

Confirming telephone order placed this date with your Mr. -----; do not duplicate delivery.

(b) A separate purchase order shall be issued for each purchase under a term contract, except in those cases where day to day deliveries are required. For example, a purchase order for ice would show the quantity to be delivered as: 100 lbs. daily for the month of July 1952.

(c) Purchase orders covering repairs to vessels under term contracts shall clearly specify the work to be performed and the applicable contract prices that will be paid. The date for the commencement and completion of the work shall be stated in the purchase order.

§ 118.02-16 Preparation of purchase orders (Form CG-2557). (a) Purchase orders shall be prepared in a sufficient number of copies to serve the administrative requirements of the purchasing unit.

(b) All applicable data required by the format of the purchase order blank shall be inserted.

(c) The original purchase order, bearing the ordering officer's signature, shall be forwarded or delivered to the supplier.

(d) The block in the lower left-hand corner of the purchase order may be utilized for the following purposes:

(1) On the original. Instructions to the supplier to acknowledge receipt of the order in the following form:

Acknowledge receipt and acceptance of this order by signing and returning the "Contractor's Acceptance Copy" to the ordering office.

(2) Contractor's acceptance copy. When the seller's acceptance of the purchase order is required, the contractor shall be furnished an extra copy of the order and shall be requested to indicate acceptance by completion of the following legend typed or stamped on that copy:

Acceptance of this order, subject to the conditions as stated, is hereby acknowledged.
Signature -----
Title -----
Date: -----

(3) Receiving unit's copy. Two copies of the purchase order shall be forwarded to each consignee. This includes the units to which the items are shipped and also the units for which the items are ultimately intended. Each consignee shall be requested to indicate complete and final delivery of the items covered by the purchase order by executing the certificate shown below on one copy of the purchase order, which is to be returned to the purchasing office. (See § 118.02-17 for instructions regarding receipts for partial deliveries.)

Received this date the above articles in good condition and in the quantities indicated.

Signature -----
Title -----
Date -----
Unit -----

§ 118.02-17 *Report of receipt of partial deliveries.* Where partial deliveries are made under a procurement document, each consignee shall report such deliveries, as occurring, to the cognizant purchasing office on Form CG-3357, Report of Receipt of Partial Deliveries. Form CG-3357 shall be submitted to field offices in duplicate. When Headquarters is the purchasing activity, the form shall be submitted to the Commandant (FS-1), in triplicate.

§ 118.02-18 *Numbering of purchase orders (Form CG-2557).* (a) Purchase orders issued by field units shall be serially numbered, in numerical sequence, beginning a new series each fiscal year. Such numbers shall be prefixed by the allotment symbol number in the case of shore units and by the class and number in the case of vessels.

EXAMPLES

01-33-53 would indicate:

1st CG District	Serial No.	Fiscal Year
01	33	53

WPG31-33-53 would indicate:

Cutter BIBB	Serial No.	Fiscal Year
WPG-31	33	53

(b) Additional numbers or symbols may be suffixed at the discretion of the ordering office for internal administrative control.

§ 118.02-19 *Purchase orders involving trade-in allowances.* Purchase orders covering replacement equipment for which an exchange or "trade-in" allowance of an old equipment has been authorized and agreed upon shall list the replacement item at gross contract or purchase price, and indicate credit against such gross cost by identification of type, make, size, serial number, etc., and exchange or "trade-in" allowance of the old equipment. The net amount will be shown on the purchase order after deduction of the exchange or "trade-in" allowance from the contract or purchase price, after which allowed discounts shall be applied to reflect the net cost of the replacement equipment.

§ 118.02-20 *Amendments to purchase orders.* Amendments to purchase orders (Form CG-2557) shall be issued in the form of a "Change Order." Change orders (Form CG-3473) will refer to the number, date, purchasing office, consignee, etc., and will be serially numbered as issued. Copies of change orders will be furnished all units receiving distribution of the initial purchase order.

§ 118.02-21 *Coding of purchase orders, contracts, and contract bulletins.* (a) Under the provisions of the act, as implemented by instructions issued by the President, the Coast Guard is required to assemble information pertaining to (1) all procurement from small business concerns, and (2) procurement under each of the several circumstances authorizing negotiation. In order to obtain the information for statistical use, appropriate code symbols have been prescribed for use on all purchase orders, contracts and contract bulletins pertaining to procurement. These code symbols are set forth hereinafter.

(b) Every purchase order issued to a commercial supplier shall bear the applicable code symbols (1) as to Sources of Procurement and (2) Circumstances Governing Procurement in order that the information will be available to permit proper filing in accordance with Subpart 118.01 of this chapter. The code symbols shall be inserted near the upper right-hand corner of the purchase document. When contract bulletins are issued by contracting offices, the applicable code symbols pertaining to each contract shall be shown for the information of all ordering offices.

§ 118.02-22 *Coding sources of procurement.* (a) Purchases made under Coast Guard contracts or purchase agreements from concerns employing less than 500 persons; SBC-1.

(b) Purchases made under Coast Guard contracts or purchase agreements from concerns employing 500 or more persons; SBC-2.

(c) Purchases made under contracts of other Government agencies (including Navy and Federal Supply Service contracts); SBC-3.

§ 118.02-23 *Coding circumstances governing procurement.*

(a) Purchases made under Coast Guard contracts or purchase agreements under the following circumstances:

- | | |
|--|-------|
| (1) Procurement by Advertising..... | CG-10 |
| (2) National Emergency (sec. 2 (c) (1))..... | CG-20 |
| (3) Public Exigency (sec. 2 (c) (2))..... | CG-21 |
| (4) Not in Excess of \$1,000 (sec. 2 (c) (3))..... | CG-22 |
| (5) Personal and Professional Services (sec. 2 (c) (4))..... | CG-23 |
| (6) Services of Educational Institutions (sec. 2 (c) (5))..... | CG-24 |
| (7) Purchases Outside the United States (sec. 2 (c) (6))..... | CG-25 |
| (8) Medicines and Medical Supplies (sec. 2 (c) (7))..... | CG-26 |
| (9) Supplies Purchased for Authorized Resale (sec. 2 (c) (8))..... | CG-27 |
| (10) Perishable Subsistence Supplies (sec. 2 (c) (9))..... | CG-28 |
| (11) Supplies or Services for Which it is Impracticable to Secure Competition by Formal Advertising (sec. 2 (c) (10))..... | CG-29 |
| (12) Experimental, Developmental, or Research Work (sec. 2 (c) (11))..... | CG-30 |
| (13) Classified Purchases (sec. 2 (c) (12))..... | CG-31 |
| (14) Technical Equipment Requiring Standardization and Interchangeability of Parts (sec. 2 (c) (13))..... | CG-32 |
| (15) Technical or Specialized Supplies Requiring Substantial Initial Investment or Extended Period of Preparation for Manufacture (sec. 2 (c) (14))..... | CG-33 |
| (16) Negotiation After Advertising (sec. 2 (c) (15))..... | CG-34 |
| (17) Purchases in the Interest of National Defense or Industrial Mobilization (sec. 2 (c) (16))..... | CG-35 |
| (18) Otherwise Authorized by Law (sec. 2 (c) (17))..... | CG-36 |
| (b) Purchases made under Navy Contracts..... | CG-50 |
| (c) Purchases made under Federal Supply Service Contracts..... | CG-51 |
| (d) Purchases made under contracts of other Government agencies..... | CG-52 |

SUBPART 118.03—CONTRACT CLAUSES

§ 118.03-1 *Terms, conditions, and provisions to be incorporated in contracts.* The contracting officer shall insure that contracts contain all terms, conditions, and provisions required by law. However, care shall be exercised to avoid citation to any law which is not applicable. Where terms, conditions, and provisions prescribed herein are not contained in standard or Coast Guard forms, they shall be incorporated in the contract by suitable reference and appendage of supplementary schedules containing the substance of the terms, conditions, and provisions imposed. Additional terms, conditions, and provisions deemed necessary by the contracting officer may be incorporated, provided they are not inconsistent with the instructions contained in this manual or current supplementary directives (circulars, memoranda, etc.). Specific authority must be obtained from the Commandant (FS-1) for the use of terms, conditions, or provisions which are inconsistent with those prescribed herein or in current supplementary directives.

§ 118.03-2 *Standard clauses for fixed price contracts executed on SF-33—(a) Supply contracts.* The standard contract clauses referred to in this paragraph shall be inserted in all fixed-price supply contracts, unless otherwise indicated. The term "fixed-price supply contract" shall mean any contract entered into either by formal advertising or by negotiation (but excluding purchase orders for \$1,000 or less, preliminary notices of award, and amendments or modifications to contracts or purchase orders) at a fixed price) with or without provision for price redetermination, escalation, or other form of price adjustment, and for supplies other than the construction, alteration or repair of buildings, bridges, roads, or other kinds of real property, and experimental, developmental, or research work. The pertinent clauses will be inserted in the contracts by attachment of the form(s) prescribed opposite each clause title in the column headed "Embodying Form" below. When clauses to be inserted in the contract are not available in printed form, they shall be included in a supplementary schedule (continuation sheet) appended to the contract.

Title	Embodying form	Note
(1) Definitions.....	SF-32	1
(2) Changes.....	SF-32	
(3) Extras.....	SF-32	
(4) Variation in Quantity.....	SF-32	
(5) Inspection.....	SF-32	
(6) Responsibility for Supplies.....	SF-32	
(7) Payments.....	SF-32	
(8) Assignment of Claims.....	SF-32	1
(9) Additional Bond Security.....	SF-32	
(10) Federal, State and Local Taxes.....	SF-32	
(11) Default.....	SF-32	1
(12) Disputes.....	SF-32	
(13) Notice and Assistance Regarding Patent Infringement.....	SF-32	
(14) Buy American Act.....	SF-32	
(15) Convict Labor.....	SF-32	
(16) Eight-Hour Law of 1912.....	SF-32	
(17) Walsh-Healey Contracts Act.....	SF-32	
(18) Nondiscrimination in Employment.....	SF-32	
(19) Officials Not To Benefit.....	SF-32	

Title	Embodying form	Note
(20) Covenant Against Contingent Fees	SF-32	
(21) Renegotiation	CG-2557A	2
(22) Patent Indemnity	CG-2557A	
(23) Reporting of Royalties	CG-2557A	
(24) Liquidated Damages	CG-2557A	4
(25) Guaranty	CG-2557A	
(26) Definitions (Amendment of SF-32)	CG-2557A	
(27) Terms of Delivery	CG-2557A-1	
(28) Examination of Records	Supplementary schedule	2, 3
(29) Copyrights	do	3
(30) Ceiling Prices	do	3
(31) Liquidated Damages	do	3, 4

NOTES

1. As amended by Form CG-2557A.
2. See § 118.04-1 for exemptions from renegotiation.
3. Clauses indicated by this note shall be copied from § 118.03-5 in schedule form on SF-36 (Continuation Sheet—Supply Contract) or plain paper, suitably titled and appended to the contract.
4. See § 116.01-140 of this chapter re assessment of liquidated damages.

(b) *Construction/Repair contracts.* When Standard Form 33 (Invitation, Bid and Award) is used to document construction and repair contracts of the categories defined in § 116.02-11 (a) of this chapter, all of the clauses prescribed in paragraph (a) of this section shall be inserted in the contract except: (23) Reporting Royalties; (27) Terms of Delivery; and (29) Copyrights. In addition, the following clauses shall be made a part of such contracts, unless otherwise indicated.

Title	Embodying form	Note
(1) Employment of Allons	Supplementary schedule	1, 2
(2) Termination for Convenience of the Government	do	1
(3) Suspension of Work	do	1
(4) Delivery and Shifting of Vessel (or Aircraft)	do	1

NOTES

1. Clauses indicated by this note shall be copied from § 118.03-5 in schedule form on SF-36 (Continuation Sheet—Supply Contract) or plain paper, suitably titled, and appended to the contract.
2. Applicable only to aircraft.

§ 118.03-3 *Standard clauses for construction and repair contracts (real property) executed on SF-23—(a) General.* The standard clauses referred to in this paragraph shall be inserted in all construction and repair contracts applicable to real property, as defined herein, unless otherwise indicated. The term "construction and repair contract (real property)" shall mean any contract entered into either by formal advertising or by negotiation for the construction, alteration, maintenance, or repair of public works, buildings, bridges, roads, or other real property. The pertinent clauses will be inserted in the contracts by attachment of the form(s) prescribed opposite each clause title in the column headed "Embodying Form" below. When clauses to be inserted in the contract are not available in printed form, they shall be included in a supplementary schedule (continuation sheet) appended to the contract.

Title	Embodying form	Note
(1) Definitions	SF-23a	3
(2) Specifications and Drawings	SF-23a	
(3) Changes	SF-23a	
(4) Changed Conditions	SF-23a	
(5) Termination for Default—Damages for Delay—Time Extensions	SF-23a	
(6) Disputes	SF-23a	
(7) Payments to Contractors	SF-23a	
(8) Materials and Workmanship	SF-23a	
(9) Inspection	SF-23a	
(10) Superintendence by Contractor	SF-23a	
(11) Permits and Responsibility for Work, etc.	SF-23a	
(12) Other Contracts	SF-23a	
(13) Patent Indemnity	SF-23a	
(14) Additional Bond Security	SF-23a	
(15) Covenant Against Contingent Fees	SF-23a	
(16) Officials Not To Benefit	SF-23a	
(17) Buy American Act	SF-23a	
(18) Convict Labor	SF-23a	
(19) Nondiscrimination in Employment	SF-23a	
(20) Davis-Bacon Act (40 U. S. C. 276a-9 (7))	SF-23a	4
(21) Eight-Hour Laws—Overtime Compensation	SF-23a	
(22) Apprentices	SF-23a	
(23) Payroll Records and Payrolls	SF-23a	
(24) Copeland (Anti-Kickback) Act—Neurobate of Wages	SF-23a	
(25) Withholding of Funds to Assure Wage Payment	SF-23a	
(26) Subcontracts—Termination	SF-23a	
(27) Renegotiation	Supplementary schedule	1, 2
(28) Examination of Records	do	1, 2
(29) Guaranty	do	3
(30) Ceiling Prices	do	3
(31) Termination for the Convenience of the Government	do	3
(32) Suspension of Work	do	2
(33) Liquidated Damages	do	2, 3
(34) Definitions (Amendment of SF-23a)	do	3
(35) Assignment of Claims	CG-2557C	

NOTES

1. See § 118.04-1 for exemptions from renegotiation.
2. See § 116.01-140 of this chapter re assessment of liquidated damages.
3. Clauses indicated by this note shall be copied from § 118.03-5 in schedule form on plain paper, suitably titled, and appended to the contract.
4. Applicable to contracts in excess of \$2,000.
5. As amended by Clause (34).

(b) *Additional provisions.* In addition to the clauses listed in paragraph (a) of this section, the general specification provisions embodied in Form CG-2557C (General Conditions Applicable to Contracts for Construction and/or Repair to Shore Structures) shall be made a part of all construction and repair contracts (real property) by incorporation of that form in the invitation for bids and the resulting contract.

§ 118.03-4 *Standard clauses for construction and repair contracts (vessels) executed on SF-23.* The standard contract clauses referred to in this section shall be inserted in all construction and repair contracts applicable to vessels, unless otherwise indicated. The term "construction and repair contract (vessels)" shall mean any contract entered into either by formal advertising or by negotiation for the construction, maintenance, or repair of vessels (including ships and other floating equipment such as, but not limited to, boats, floating dry-docks, cranes, barges, and the like).

The pertinent clauses will be inserted in the contracts by attachment of the form(s) prescribed opposite each clause title in the column headed "Embodying Form" below. When clauses to be inserted in the contract are not available in printed form, they shall be included in a supplementary schedule (continuation sheet) appended to the contract.

Title	Embodying form	Note
(1) Definitions	SF-23a	
(2) Specifications and Drawings	SF-23a	3
(3) Changes	SF-23a	
(4) Changed Conditions	SF-23a	
(5) Termination for Default—Damages for Delay—Time Extensions	SF-23a	
(6) Disputes	SF-23a	
(7) Payments to Contractors	SF-23a	4
(8) Materials and Workmanship	SF-23a	
(9) Inspection	SF-23a	
(10) Superintendence by Contractor	SF-23a	
(11) Permits and Responsibility for Work, etc.	SF-23a	
(12) Other Contracts	SF-23a	
(13) Patent Indemnity	SF-23a	
(14) Additional Bond Security	SF-23a	
(15) Covenant Against Contingent Fees	SF-23a	
(16) Officials Not To Benefit	SF-23a	
(17) Buy American Act	SF-23a	
(18) Convict Labor	SF-23a	
(19) Nondiscrimination in Employment	SF-23a	
(20) Eight-Hour Laws—Overtime Compensation	SF-23a	
(21) Apprentices	SF-23a	
(22) Payroll Records and Payrolls	SF-23a	4
(23) Withholding of Funds to Assure Wage Payment	SF-23a	
(24) Subcontracts—Termination	SF-23a	4
(25) Performance and Manner of Doing the Work	CG-2557B	
(26) Lay Days	CG-2557B	
(27) Underwater Paint for Steel Vessels	CG-2557B	
(28) Liquidated Damages	CG-2557B	3
(29) Indemnity and Insurance	CG-2557B	
(30) Renegotiation	Supplementary schedule	1, 2
(31) Examination of Records	do	1, 2
(32) Guaranty	do	3
(33) Ceiling Prices	do	3
(34) Termination for the Convenience of the Government	do	3
(35) Suspension of Work	do	2
(36) Delivery and Shifting of Vessel	do	1
(37) Indemnity and Insurance—Valuations	do	1
(38) Assignment of Claims	do	1
(39) Amendment of Standard Form 23a, General Provisions (Construction Contracts)	do	1
(40) Walsh-Healey Public Contracts Act	do	1

NOTES

1. Clauses indicated by this note shall be copied from § 118.03-5 in schedule form on plain paper, suitably titled, and appended to the contract.
2. See § 118.04-1 for exemptions from renegotiation.
3. See § 116.01-140 of this chapter re assessment of liquidated damages.
4. As amended by Clause (30).

§ 118.03-5 *Special contract clauses.* The contract clauses set forth in this section supplement those contained in the following forms and shall be used when required by §§ 118.03-2, 118.03-3, and 118.03-4, and/or when applicable to other contracts: SF-23a, SF-32, CG-2557A, CG-2557A-1, CG-2557B, and CG-2557C. When any of these clauses are required, they shall be embodied in the pertinent contract by suitable reference and appended thereto in schedule (or

continuation sheet) form. Clauses prescribed elsewhere in Part 116 of this chapter, or in current supplementary directives (circulars, memoranda, etc.), which are not available in printed form, shall be inserted in contracts in the same manner.

(a) *Government use and publication of copyrighted material*—(1) *General*. In the event the contractor incorporates copyrighted or copyrightable material owned by it or others in the material furnished to the Government, the following contract clause shall apply.

Copyrights. (1) The contractor agrees to and does hereby grant to the Government, and to its officers, agents and employees acting within the scope of their official duties, (1) a royalty-free, nonexclusive and irrevocable license to reproduce, translate, publish, use, and dispose of, and to authorize others so to do, all copyrightable material first produced or composed and delivered to the Government under this contract by the contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material, and (2) a license as aforesaid under any and all copyrighted or copyrightable work not first produced or composed by the contractor in the performance of this contract, but which is incorporated in the material furnished under the contract, provided that such licenses shall be only to the extent the contractor now has, or prior to completion or final settlement of the contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(ii) The contractor agrees that it will exert all reasonable effort to advise the contracting officer, at the time of delivering any copyrightable or copyrighted work furnished under this contract, of any adversely held copyrighted or copyrightable material incorporated in any such work and of any invasion of the right of privacy therein contained.

(iii) The contractor agrees to report to the contracting officer, promptly and in reasonable written detail, any notice or claim of copyright infringement received by the contractor with respect to any material delivered under this contract.

(2) *Motion pictures*. The clause set forth below shall apply to all contracts for motion pictures, or the production of motion pictures, and in all contracts for the preparation of motion picture scripts, translations, adaptations and the like:

Copyrights. (1) The contractor agrees that all material forming the subject matter of this contract and first produced in the performance of this contract shall be the sole property of the Government, and may not be published or reproduced in whole or in part, or in any manner or form, other than by the Government or with its express consent. The contractor further agrees that no right at common law or in equity shall be asserted and no claim to copyright by statute shall be established by the contractor in any material first produced in the performance of this contract.

(ii) The contractor agrees to grant and does hereby grant to the Government a royalty-free, nonexclusive and irrevocable license (1) to publish, reproduce, use, and dispose of, in any manner, any and all copyrighted or copyrightable material not first produced or composed in the performance of this contract but which is incorporated in the material furnished under the contract; and (2) to authorize others so to do.

(iii) The contractor agrees to indemnify and save and hold harmless the Govern-

ment, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, for (1) violation of proprietary rights, copyright or right of privacy, arising out of the reproduction, use or disposition of any copyrighted or copyrightable material furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in said material.

(b) *Employment of aliens*. No aliens employed by the contractor shall be permitted to have access to the plans or specifications, or the work under construction, or to participate in the contract trials, without the written consent beforehand of the Secretary or his duly authorized representative. (This clause shall apply only to contracts covering the construction and repair of aircraft.)

(c) *Ceiling prices*. Contractor agrees that the prices invoiced hereunder will not exceed the lower of (1) the contract prices or (2) any applicable ceiling prices established by the Office of Price Stabilization or other authorized Government agency.

(d) *Guaranty*. Notwithstanding the provisions of Clause 9, Standard Form 23a (General Provisions—Construction Contracts), forming a part of this contract, entitled "Inspection," should any work embodied in this contract prove defective within a period of one (1) year after completion and acceptance, by reason of faulty material or workmanship, the contractor shall remedy such defects at his own expense to the entire satisfaction of the contracting officer within a reasonable time after receiving written notice of same.

(e) *Termination for the convenience of the Government*. The Government reserves the right to terminate this contract, in whole or in part, for its convenience. If the contract is so terminated, the contracting officer shall make an equitable adjustment in the contract price to compensate the contractor for all reasonable costs incurred by him in connection with said contract, plus a reasonable profit with respect to all completed work. If the contractor does not agree as to the price so determined, he shall have the right to appeal as provided in Clause 6, Standard Form 23a (General Provisions—Construction Contracts), or Clause 12, Standard Form 32 (General Provisions—Supply Contract), forming a part of this contract, entitled "Disputes." The contractor shall make a similar provision covering termination with respect to all subcontracts and orders for supplies and materials.

(f) *Suspension of work*. The contracting officer may, by written order, direct the contractor to suspend all or any part of the work for such period of time as may be determined by him to be necessary or desirable for the convenience of the Government. If such suspension delays the progress of the work and causes additional expense or loss to the contractor in the performance of the work, not due to the fault or negligence of the contractor, the contracting officer shall make an equitable adjustment in the contract price and time of performance and modify the contract accordingly. Provided, however, that no

adjustment will be made under this clause for suspensions ordered under any other clause of the contract or provision of the specifications: And, provided further, that any claim for adjustment hereunder must be asserted within 30 days from the date such suspension is ordered. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Clause 6, Standard Form 23a (General Provisions—Construction Contracts), or Clause 12, Standard Form 32 (General Provisions—Supply Contract), forming a part of this contract, entitled "Disputes."

(g) *Delivery and shifting of vessel (or aircraft)*. The vessel (or aircraft) will be delivered to the contractor at his place of business and removed therefrom, upon completion of all work, by the Government. While the vessel (or aircraft) is in the hands of the contractor, any necessary towage, cartage, or other transportation between ship (or plane) and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the contractor without additional charge to the Government.

(h) *Renegotiation*. (1) This contract shall be subject to any act of the Congress, whether heretofore or hereafter enacted and to the extent indicated therein, providing for the renegotiation of said contract and shall be deemed to contain all the provisions required by any such act without subsequent amendment of this contract specifically incorporating such provisions.

(2) The contractor (which term, as used in this clause, means the party contracting to furnish the materials or perform the work required by this contract) agrees to insert the provisions of this clause, including this paragraph (2), in subcontracts, as defined in section 103 (g) of the Renegotiation Act of 1951 (Pub. Law 9, 82d Cong.), except any subcontracts of a class or type described in section 106 (a) of the Renegotiation Act of 1951.

(3) Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the Congress, heretofore or hereafter enacted.

(i) *Examination of records*—(1) *Government-contractor transactions*. The following provision is applicable to this contract (or purchase order) when (i) the contract (or purchase order) is in an amount, or by subsequent change order(s) is increased to an amount, in excess of \$1,000; (ii) is negotiated, as distinguished from formal advertising, under authority of section 2c, Public Law 413, 80th Congress; and (iii) does not cover the rendering of public utility services at rates established for uniform applicability to the general public:

The contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the contractor involving transactions related to this contract.

(2) **Contractor-subcontractor transactions.** The following provision will be made a part of a subcontract (or purchase order) issued by a contractor when the subcontract (or contractor's purchase order) (i) is in an amount, or by subsequent change order(s) is increased to an amount, in excess of \$1,000, and (ii) does not cover the rendering of public utility services at rates established for uniform applicability to the general public:

The contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payments under this contract with the Government, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractors involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding \$1,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(j) **Indemnity and insurance valuations.** Supplementing Article 5 of Form CG-2557B (Conditions Applicable to Contracts for Repairs to Vessels), forming a part of this contract, entitled "Indemnity and Insurance," the value of the Coast Guard vessel(s) listed herein for indemnity and insurance purposes is as follows: (Indicate valuation of vessel(s) opposite name and number.)

(For the purpose of the above clause, the valuations shown in the table below shall apply.)

Type	Class	Value of vessel for indemnity and insurance purposes only
Gunboats, 327-foot	WPG	\$300,000
Gunboats, 255-foot	WPG	300,000
Gunboats, 250-foot	WPG	300,000
Seaplane tenders, 311-foot	WAYP	300,000
Escort vessels, 306-foot	WDE	300,000
Icebreakers, 290-foot	WAGB	300,000
Icebreakers, 269-foot	WAGB	300,000
Miscellaneous auxiliary, 230-foot	WAG	300,000
Patrol craft, large, 165-foot	WPC	300,000
Patrol craft, small, 125-foot	WSC	300,000
Oceanographic tug, 218-foot	WAT	300,000
Oceanographic tug, 205-foot	WAT	300,000
Cable layers, 189-foot	WARC	300,000
Cargo ships, 339-foot	WAK	300,000
Cargo ships, 176-foot	WAK	300,000
Buoy tenders, 180-foot	WAGL	300,000
Buoy tenders, 180-foot	WAGL	300,000
Buoy tenders, 100-foot and over	WAGL	150,000
Buoy boats, 80-foot	WD	100,000
Buoy boats, 72-foot	WD	75,000
Buoy boats, 65-foot	WD	75,000
Harbor tug, 110-foot	WYT	300,000
Harbor tug, under 100-foot	WYT	80,000
Patrol boats, 83-foot	WPB	100,000
Patrol boats, 95-foot	WPB	100,000
Lightships	WAL	300,000
Training vessels, 290-foot	WIX	300,000
Research and development vessels, 125-foot	WIX	200,000
Research and development vessels, 85-foot	WIX	70,000
Buoy boats, 40-foot		30,000
Amphibious boats		30,000
Barge, over 100-foot		50,000
Barges, under 100-foot		20,000
Floating lifeboat stations		75,000

(k) **Liquidated damages.** The time required for (brief description) being of material consideration, it is agreed that in the case of the failure of the contrac-

tor to complete the work (or delivery) within the time specified, there shall be deducted as liquidated damages, and not as a penalty, the sum of (insert rate per day and unit of assessment) per calendar day, from any payment made to the contractor, if the contractor shall be in inexcusable default. (See § 116.01-140.)

(l) **Assignment of claims.** (1) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U. S. C. 203, 41 U. S. C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any other provision of this contract, payments to an assignee of moneys due or to become due under this contract shall not, to the extent provided in said act, as amended, be subject to reduction or set-off.

(2) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same: *Provided*, That a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

(m) **Amendment of standard Form 23A, general provisions (construction contracts).** (This amendment shall apply only when SF-23A is used in connection with the construction and/or repair of vessels.) Standard Form 23A, General Provisions (Construction Contracts), forming a part of this contract, is hereby amended as follows:

(1) **Clause 1, Definitions.** The term "contracting officer" as used herein shall include his duly appointed successor or his authorized representative.

(2) **Clause 7, Payments to Contractors.** Paragraph (b), line 9, amended by addition of the word "vessel" between "building" and "public work."

(3) **Clause 20, Davis-Bacon Act (40 U. S. C. 276-a (7)).** Deleted in entirety.

(4) **Clause 24, Copeland (Anti-Kickback) Act—Nonrebate of Wages.** Deleted in entirety.

(5) **Clause 23, Payroll Records and Payrolls.** Paragraph (b) deleted in entirety.

(6) **Clause 26, Subcontracts—Termination.** Line 1 amended by deletion of "Clauses 20 through 26" and substitution of "Clauses 21, 22, 23, 25, and 26."

(n) **Definitions (Amendment of SF-23A).** (This clause shall apply when SF-23A is used in connection with the

construction and/or repair of real property.) Clause 1, Definitions, of Standard Form 23A, General Provisions (Construction Contracts), forming a part of this contract, is hereby amended as follows:

The term "contracting officer" as used herein shall include his duly appointed successor or his authorized representative.

(o) **Walsh-Healey Public Contracts Act.** If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act as amended (41 U. S. C. 35-45), there are hereby incorporated by reference all representations and stipulations required by said act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

SUBPART 118.04—ADMINISTRATIVE INSTRUCTIONS

RENEGOTIATION ACT OF 1951

§ 118.04-1 **Renegotiation Act of 1951; administration—(a) Contracts exempt from renegotiation.** Under authority of section 106 (a) (Renegotiation Act of 1951), (50 U. S. C. 1216) the following classes of contracts are exempt from renegotiation:

(1) **Mandatory exemptions.** (i) Any contract by a Department with any Territory, possession, or state, or any agency or political subdivision thereof, or with any foreign government or any agency thereof; or

(ii) Any contract or subcontract for an agricultural commodity in its raw or natural state, or if the commodity is not customarily sold or has not an established market in its raw or natural state, in the first form or state, beyond the raw or natural state, in which it is customarily sold or in which it has an established market. The term "agricultural commodity" as used herein shall include but shall not be limited to:

(a) Commodities resulting from the cultivation of the soil, such as grains of all kinds, fruits, nuts, vegetables, hay, straw, cotton, tobacco, sugarcane, and sugar beets.

(b) Natural resins, saps, and gums of trees;

(c) Animals, such as cattle, hogs, poultry, and sheep, fish, and other marine life, and the produce of live animals, such as wool, eggs, milk and cream; or

(iii) Any contract or subcontract for the product of a mine, oil, or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use; or

(iv) Any contract or subcontract with a common carrier for transportation, or with a public utility for gas, electric energy, water, communications, or transportation, when made in either case at rates not in excess of published rates or charges filed with, fixed, approved, or regulated by a public regulatory body,

State, Federal, or local, or at rates not in excess of unregulated rates of such a public utility which are substantially as favorable to users and consumers as are regulated rates. In the case of the furnishing or sale of transportation by common carrier by water, this paragraph shall apply only to such furnishing or sale which is subject to the jurisdiction of the Interstate Commerce Commission under Part III of the Interstate Commerce Act or subject to the jurisdiction of the Federal Maritime Board under the Interstate Shipping Act, 1933; or

(v) Any contract or subcontract with an organization exempt from taxation under section 101 (6) of the Internal Revenue Code, but only if the income from such contract or subcontract is not includible under section 422 of such code in computing the unrelated business net income of such organization; or

(vi) Any contract which the Board determines does not have a direct and immediate connection with the National Defense. The Board shall prescribe regulations designating those classes and types of contracts which shall be exempt under this paragraph; and the Board shall, in accordance with regulations prescribed by it, exempt any individual contract not falling within any such class or type if it determines that such contract does not have a direct and immediate connection with the National Defense. Notwithstanding section 108 of this title, regulations prescribed by the Board under this paragraph, and any determination of the Board that a contract is or is not exempt under this paragraph, shall not be reviewed or redetermined by the Tax Court or by any other court or agency; or

(vii) Any subcontract directly or indirectly under a contract or subcontract to which this title does not apply by reason of this subsection.

(2) *Administrative exemptions*—(i) *Building maintenance and repair.* Contracts for maintenance and repair of buildings and structures. This exemption does not apply to contracts for the renovation or reactivation of standby facilities or facilities acquired after June 30, 1950, or for the substantial enlargement, alteration or expansion of facilities.

(ii) *Contracts for other Departments.* Contracts to the extent that they obligate funds of another Department named in or designated pursuant to section 103 of the act or to the extent that the contracting Department is to be reimbursed by such other Department, provided that the contracts would be exempt under this section if made by such other Department.

(iii) *Contracts for other persons or agencies.* Contracts to the extent that they obligate funds of another agency of the Government, other than a Department named in or designated pursuant to section 103 of the act, or to the extent that the contracting Department is to be reimbursed by such other Government agency or other person.

NOTE: It is the responsibility of any Department administering a contract which is exempt under subdivision (ii) or (iii) of this subparagraph to so notify the contrac-

tor, and contractors must assume that Departments employ funds appropriated to them, except when contractors are informed otherwise by such Departments.

(iv) *Materials for authorized resale.* Contracts for the purchase of materials to be resold through commissaries, military exchanges, ships' service stores, slop chests, post restaurants, and any other contracts for the purchase of materials for authorized resale, except contracts for the purchase of materials to be issued or to be sold under the monetary clothing allowance system of any of the armed services.

(v) *Removal of waste materials.* Contracts for the removal of waste materials.

(vi) *Laundry and cleaning services.* Contracts for laundry, cleaning and pressing services.

(vii) *Department of Commerce.* All contracts of the Office of Technical Services, Bureau of Census, Weather Bureau, Coast and Geodetic Survey, Inland Waterways Corporation, Bureau of Foreign and Domestic Commerce, Patent Office, Civil Aeronautics Board and Bureau of Public Roads, Department of Commerce.

(viii) *General Services Administration.* All contracts of the Public Buildings Service and the National Archives and Records Service, General Services Administration; all contracts of the Federal Supply Service, General Services Administration, for store stock to be delivered to its Supply Centers; and all Federal Supply Schedule contracts and consolidated direct delivery contracts of the Federal Supply Service, General Services Administration, to the extent that deliveries thereunder are made to agencies of the Government other than the Department of Defense, Department of the Army, Department of the Navy, Department of the Air Force, Atomic Energy Commission and United States Coast Guard.

NOTE: Exemption of the type contract outlined in this class is not applicable to single Coast Guard purchases against Federal Supply Schedule contracts in excess of \$10,000 in amount.

(ix) *Construction contracts.* All construction contracts entered into before July 1, 1950, except those entered into by the Department of Defense, Department of the Army, Department of the Navy, Department of the Air Force, United States Coast Guard, and Atomic Energy Commission.

(x) *Canal Zone Government and Panama Canal Company.* All construction contracts for housing entered into before July 1, 1950, by the Canal Zone Government and the Panama Canal Company.

(xi) *Housing and Home Finance Agency.* All contracts of the Housing and Home Finance Agency, except construction contracts entered into after June 30, 1950.

(xii) *Corps of Engineers.* All contracts obligating funds appropriated for the civil functions of the Corps of Engineers, Department of the Army, except those contracts entered into after June 30, 1950, for the construction of facilities directly or indirectly related to the generation or distribution of hydroelectric energy.

(xiii) *Bonneville Power Administration.* All contracts of the Bonneville Power Administration entered into before July 1, 1950.

(xiv) *Tennessee Valley Authority.* All contracts of the Tennessee Valley Authority entered into before July 1, 1950.

(xv) *(United States) Geological Survey.* All contracts of the (United States) Geological Survey for gage-reading services.

(b) *Contracting officer's authority to determine contracts exempt from renegotiation.* Each duly designated contracting officer is delegated authority to act as the duly authorized representative of the Commandant in determining which contracts are exempt from renegotiation under paragraph (a) (2) above.

(c) *Submission of copies of contracts to headquarters.* A copy of proposed contracts in excess of \$1,000 shall be submitted to the Commandant (FS-1) for review only when the contracting officer determines that an exception exists to the rules promulgated by the Renegotiation Board in its listing of the fifteen (15) classes of contracts not having a direct and immediate bearing upon the defense effort as listed in paragraph (a) (2) of this section. Such an exception may be of either of the following types:

(1) Contracts which fall within the fifteen (15) classes of contracts listed, but are determined by the contracting officer to have the required direct and immediate bearing upon the National Defense effort.

(2) Contracts which do not fall within the fifteen (15) classes of contracts listed, but are determined by the contracting officer not to have the required direct and immediate bearing upon the National Defense effort.

(d) *Relief for contractors and subcontractors.* Any individual prime contractor or subcontractor who believes his prime contract or subcontract is not directly and immediately connected with the National Defense effort may, under authority of section 106 (f) of the act, submit a recommendation that such contract or subcontract be excluded from renegotiation under section 106 (a) (6) of the act. Such recommendations shall be submitted to the contracting officer, who will forward same to the Commandant (FS-1) for further transmittal to the Renegotiation Board. The contracting officer, in transmitting such recommendations, shall indicate whether his original determination defined the contract as having a direct and immediate connection with the National Defense.

(e) *Submission of reports to the Renegotiation Board.* Reports of performance information concerning contracts subject to renegotiation shall be provided only in response to specific request by the Regional Renegotiation Board offices in Boston, Chicago, Detroit, Los Angeles, New York, and Washington, D. C. The area covered by each board is outlined in Appendix B, page 9, of the Renegotiation Board's pamphlet entitled "Guide Book for Reporting Performance Information."

COPELAND ("KICKBACK") ACT

§ 118.04-4 *Affidavits required by Copeland ("Kickback") Act*—(a) *Submission of affidavits.* Each contractor or subcontractor subject to the provisions of the Copeland ("Kickback") Act (40 U. S. C. 276 b and c) is required to furnish each week a sworn affidavit with respect to the wages paid each of its employees. Each affidavit shall be delivered to the contracting officer within seven days after the regular payment date of the payroll period.

(b) *Examination and disposition of affidavits.* Affidavits received from contractors and subcontractors shall be accumulated by the contracting officer and preserved in the local files for three years after completion of the contract. When received, the affidavits shall be examined and any discrepancy investigated in accordance with the Enforcement Regulations of the Department of Labor (Title 29, Subtitle A, Code of Federal Regulations).

CONTRACTOR'S STATEMENT OF CONTINGENT OR OTHER FEES

§ 118.04-8 *Purpose.* (a) The Armed Services Procurement Act of 1947 (41 U. S. C. 254), requires that negotiated contracts shall include a suitable warranty against contingent fees. General Services Administration General Regulation No. 12, dated 29 December 1952, stipulates that the same warranty will also be included in advertised contracts, and promulgates the form, procedure, principles, and standards essential to meeting this requirement, and extends their application to contracts consummated as a result of both negotiation and advertising. To attain the desired objective, these instructions will apply.

(b) The aim of the basic law and implementing regulation is to remove, to the maximum degree, improper influences affecting contract purchase transactions. The most effective means of accomplishing this is to identify and exclude certain contractor-agent arrangements. The success of this effort is contingent upon the initiative and good judgment of all contracting officers in applying these instructions.

§ 118.04-9 *Definitions*—(a) *Contingent fee.* Any fee (otherwise called commission, percentage or brokerage) the payment of which is contingent upon success in obtaining the Government contract involved.

(b) *Improper influence.* Direct or indirect influence which induces or tends to induce consideration or action by an employee or officer of the United States regarding a Government contract on a basis other than its merits.

(c) *Bona fide employees.* Any individual employed full time by a concern and over whom the concern has the right to exercise supervision and control of time, place and performance of work.

(d) *Bona fide agent.* An agent having adequate knowledge of the products and the firm represented, and which agent does not employ improper influence in seeking to obtain any Government contract for its principals. Further, fees charged the principals for services ren-

dered by such agent are commensurate with those prevailing in the trade for similar services to commercial business.

§ 118.04-10 *Scope.* 1. These instructions are applicable to all negotiated and advertised contracts except those defined below:

(a) Any advertised contract in which the aggregate amount involved does not exceed \$25,000.

(b) Any negotiated contract in which the aggregate amount involved does not exceed \$1,000.

(c) Any negotiated contract for perishable subsistence supplies in which the aggregate amount involved does not exceed \$25,000.

(d) Any contract for services which are required to be performed by an individual contractor in person under Government supervision and paid for on a time basis, and any contract for public utility services furnished by a public utility company where the utility company's rates for the services furnished are subject to regulation by Federal, State, or other regulatory body and the public utility company is the sole source of supply.

(e) Contracts to be made in foreign countries.

§ 118.04-11 *Covenant against contingent fees.* (a) In contracts for the purchase by the Government of real property, personal property, or services, and contracts for the construction or repair of public buildings or works this clause will be included:

NOTE: The following clause is set forth as Article 20 of General Provisions, Standard Form 32, November 1949, ed.:

"The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee."

(b) In contracts for the sale of Government owned real or personal property this clause will be included:

NOTE: The following clause is in the form substantially as set forth in Article 13 of Sale of Government Property—Invitation, Bid, and Acceptance, Standard Form 114, August 1950, ed.:

"Purchaser warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Purchaser for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or in its discretion to require the Purchaser to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee."

(c) The covenant as set forth in paragraph (a) of this section may be appro-

priately adapted for use in leases of real or personal property for Government use. The covenant as set forth in paragraph (b) of this section may be appropriately adapted for use in leases of Government-owned real or personal property.

§ 118.04-12 *Representation and agreement required for prospective contractors.* Except as provided for in § 116.05-95 of this chapter, each contracting officer shall, upon initiating advertising or negotiation in connection with a contract, secure a written representation from prospective contractors as to whether they have employed or retained any company or person (other than a full-time employee working solely for the prospective contractor) to solicit or secure the contract, and shall secure a written agreement to furnish information relating thereto as required by the contracting officer. The representation and agreement appearing on the face of Standard Form 33, Invitation, Bid, and Award, November 1949 ed., and Standard Form 114, Sale of Government Property, Invitation, Bid and Acceptance, August 1950 ed., pending revision of such forms, shall be deleted and the following representation (and agreement) substituted therefor:

The bidder [(or) contractor] represents: (a) that he ☐ has, ☐ has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder [(or) contractor]) to solicit or secure this contract and (b) that he ☐ has, ☐ has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder [(or) contractor]) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating thereto as requested by the contracting officer.

NOTE: For interpretation of the representation, including the term "bona fide employee," see General Services Administration Regulations, 44 CFR 150.5 (d), 150.7; 17 F. R. 253.

§ 118.04-13 *Standard Form 119, Contractor's Statement of Contingent or Other Fees.* (a) Standard Form 119 (December 1952) shall be used by contracting officers whenever either part of the inquiry provided for by § 116.05-94 of this chapter is answered in the affirmative by a successful bidder or contractor. When, after use of the form, further information is required, it may be obtained in any appropriate manner.

(b) Any bidder or proposed contractor who has previously furnished a Standard Form 119 (December 1952) to the office issuing the invitation or negotiating contract may be permitted to accompany his bid, or submit in connection with the proposed contract, a signed statement (1) indicating when such completed form was previously furnished, (2) identifying by number the previous invitation or contract in connection with which such form was submitted, and (3) representing that the statements in such previously furnished form are applicable to such subsequent bid or contract. In such case, submission of an additional completed Standard Form 119 need not be required.

§ 118.04-14 *Acceptance or rejection.*
(a) Standard Form 119, when received from the bidder or contractor, will be carefully reviewed by the contracting officer for conformance with standards set forth herein and in § 150.5, Title 44, General Services Administration. In the absence of any evidence or inference of violation of the covenant against contingent fees, Standard Form 119 will be filed by the unit, and no further action taken.

(b) In all cases where there is absolute evidence of misrepresentation or violation of the covenant, or reasonable doubt exists with respect to compliance with the covenant, the contracting officer shall:

- (1) Reject offer or bid, if award has not been made, or
- (2) Suspend award action, optional for advertised but mandatory for negotiated contracts, or
- (3) Annul contract without liability, if award has been made, or
- (4) Recover amount of the fee involved, if award has been made, or
- (5) Perform any of above independently or by referring Standard Form 119 and related data to the Commandant (FS) for final approval of recommended action.

Upon termination of proceedings, Standard Form 119 will be permanently filed in Headquarters.

(c) Persistent failure of bidder or contractor to cooperate in furnishing representation or Standard Form 119, or repetitive abuse of covenant should be reported to the Commandant (FS) for consideration. When circumstances warrant, as determined by Headquarters, debarment proceedings will be initiated.

(d) The exemption of certain contracts from these instructions, as set forth in § 118.04-10 (a), (b), and (c), does not preclude prosecuting irregularities otherwise subject to these instructions. No special effort will be undertaken to discover such conditions. Once identified and substantiated, however, they will be processed as provided for in paragraph (b) of this section.

PROCEDURES FOR HANDLING ASSIGNMENTS OF CLAIMS

§ 118.04-18 *Assignment of claims—*
(a) *Authority.* The Assignment of Claims Act of 1940 (54 Stat. 1029) (31 U. S. C. 203, 41 U. S. C. 15), permits contractors to assign moneys due from the Government under a contract providing for payments aggregating \$1,000 or more, provided the contract does not forbid such assignment. The assignee may be a bank, trust company, or other financing institution, including any Federal lending agency. Unless otherwise expressly permitted by the contract, the assignment (1) must cover all amounts payable and not already paid, (2) shall not be made to more than one party, and (3) shall not be subject to further assignment, except that an assignment or re-assignment may be made to one party as agent or trustee for two or more parties participating in financing the contract.

(b) *Notices of assignment—*(1) *Requirements.* The Assignment of Claims

Act of 1940 (31 U. S. C. 203 and 41 U. S. C. 15), provides that written notice of the assignment be filed with:

- (i) The contracting officer or the head of his department or agency (see Note (a) below);
- (ii) The surety or sureties upon the bond or bonds, if any, in connection with the contract;
- (iii) The authorized certifying officer, if any, designated in the contract to effect payment (see Note (b) below).

NOTES:

a. The Act provides for service under the assignment upon receipt of the notice of assignment and the true copy of the instrument of assignment by either the contracting officer or the head of his department or agency. Such papers received by the Office of the Secretary will be referred to the Commandant for disposition in accordance with subparagraphs (3) to (5) of this paragraph.

b. Authorized certifying officers receiving such papers shall acknowledge receipt thereof; however, certification for payment shall be withheld until receipt of advice from the Commandant that the particular instrument of assignment has been approved legally. (See subparagraphs (3) and (4) of this paragraph.)

(2) *Action by assignee—*(i) *Forms required.* It is the responsibility of the assignee to prepare the notice of assignment form and furnish a true copy of the instrument of assignment. The notice of assignment is submitted in the form prescribed by the Federal Supply Service, G. S. A. (see specimen below). The true copy of the instrument of assignment may consist of (a) a duplicate original containing all the signatures, seals, acknowledgments, etc., which appear on the original, (b) a complete photostatic copy of the original, or (c) a certified copy of the original, provided that such copy is accurate and complete in all respects, including signatures, seals, acknowledgments, etc., which may be typewritten, and provided that the certificate to the effect it is a true copy be executed by a notary public or other officer authorized by law to administer oaths.

NOTICE OF ASSIGNMENT

To: _____ Date: _____
Re Contract No. _____
Made by the United States of America
Department _____ Division _____
With _____
(Name of contractor)
(Address of contractor)
For _____ Dated _____

PLEASE take notice that moneys due or to become due under the contract described above have been assigned to the undersigned pursuant to the provisions of the Assignment of Claims Act of 1940 (54 Stat. 1029), as amended by P/L 30, 82d Congress, approved May 15, 1951.

A true copy of the instrument of assignment is attached to the original hereof.

Payments due or to become due under such contract should be made to the undersigned assignee.

Please return to the undersigned the three enclosed copies of this notice with appropriate notations showing the date and hour of receipt, and duly signed by the person

acknowledging receipt on behalf of the addressee.

Very truly yours,

(Name of assignee)

By: _____
(Name and title of signing officer)

(Address of assignee)

Receipt is hereby acknowledged of the above notice and a copy of the above mentioned instrument of assignment. These were received at _____ a. m., _____ p. m., on _____, 19____.

(Date)

(Signature)

On behalf of _____

(Name and title of addressee of notice)

(ii) *Forms distribution.* The assignee will forward an original and three copies of the notice of assignment and a true copy of the instrument of assignment to each of the parties listed in subdivision (i) of this subparagraph. (If there is no surety bond in connection with the contract giving rise to the claim which is assigned, or if no authorized certifying officer is designated in the contract to effect settlement of amounts due thereon, the notice of assignment will be served only on the contracting officer or the head of his department or agency.) Each party will return to the assignee three copies of the notice of assignment with acknowledgment of receipt thereon. However, the return of the copies acknowledged by the contracting officer and the authorized certifying officer shall be made after the review as to legal sufficiency has been made in accordance with subparagraph (4) of this paragraph. The original notice of assignment and true copy of the instrument of assignment will be retained in the files of the acknowledging official in each case. The assignee will forward to the officer designated to receive invoices for payment(s) under the contract, either with the first contractor's invoice or prior to the time the first contractor's invoice is submitted, two copies of the acknowledged notices from each of the parties listed in subparagraph (1) of this paragraph.

(3) *Action by Contracting Officer.* Immediately upon receipt by the contracting officer of written notice of an assignment together with a true copy of the instrument of assignment, he shall forward such papers to the Commandant (FS-1) under a letter of transmittal. The letter shall contain a statement of the date upon which the papers were received from the assignee and shall enclose a copy of the pertinent contract. By carbon copies of the letter of transmittal, the contracting officer shall notify the authorized certifying officer and all holders of file copies of the contract within the Coast Guard of the receipt of the assignment. Upon return of the notice of assignment and the true copy of the instrument of assignment from the Commandant accompanied by legal approval or disapproval thereof, the con-

tracting officer shall (i) forward to the assignee three copies of the assignment bearing acknowledgment of receipt, (ii) furnish a certified copy of the approval or disapproval to the authorized certifying officer, and (iii) notify all holders of file copies of the contract within the Coast Guard of the approval or disapproval of the assignment. (See §§ 118.04-10 and 118.04-11 for contract distribution.)

(4) *Action by Headquarters.* The Commandant (FS-1) will obtain the necessary review for approval or disapproval as to legal sufficiency of form and execution all instruments of assignment submitted in accordance with subparagraph (3) of this paragraph. Approved notices of assignment and instruments of assignment will be returned to the contracting officer under letter of transmittal for action in accordance with subparagraph (3) of this paragraph. Likewise, the contracting officer will be directed to send immediately to the assignee any invalid or defective assignments with a statement of the defects. (Upon receipt of a new or corrected assignment, the procedure set forth in subparagraph (3) of this paragraph, and in this subparagraph, shall be followed with reference to the new or corrected assignment.)

(5) *Action by authorized certifying officer—(i) General.* Upon receipt of the original and three copies of the notice of assignment and the true copy of the instrument of assignment from the assignee, the authorized certifying officer will retain the original notice and instrument of assignment and, after being advised by the contracting officer of approval of the assignment for legal sufficiency, will return three acknowledged copies of the notice of assignment to the assignee (see subparagraph (2) (ii) of this paragraph). Upon receipt of the copies of each acknowledgment notice of assignment and provided the assignment applies to a numbered contract, the authorized certifying officer will forward (under a letter of transmittal if different units are involved, or under a memorandum if he is located in the same office or unit) one copy acknowledged by the contracting officer and one copy acknowledged by the surety (or sureties), if any, to the office holding the original contract (see § 118.02-10). Copy of the letter or memorandum of transmittal shall be forwarded to the contracting officer for his information and files. These acknowledgments will be attached to the original contract file and held available for audit by the General Accounting Office and/or the Audit Division, Office of the Comptroller, Coast Guard. It will not be necessary to forward a copy of the notice of assignment acknowledged by the authorized certifying officer for attachment to the file containing the original contract. When the acknowledged copies are forwarded to the office holding the original contract, notices of assignment will not be required with the Voucher and Schedule of Payments (Form CG-3092). However, in the case of purchase documents not numbered in the regular contract series (see § 118.02-11) and orders issued under a regular-numbered con-

tract, when the individual order rather than the entire contract is assigned, the required copies of the notice of assignment will be submitted attached to the Voucher and Schedule of Payments (Form CG-3092). The authorized certifying officer will retain one copy of each of the notices of assignment acknowledged by the contracting officer, the authorized certifying officer, and the surety (or sureties), if any.

(ii) *Payments.* When payments under a contract have been properly assigned, payments may be made only to the designated assignee. Under no circumstances will payment be made to other than the designated assignee after receipt of the notice of assignment by the authorized certifying officer. If the notice is received by the authorized certifying officer but the assignee fails to comply with all requirements as to furnishing documents, payments will be withheld until the required papers are received.

(6) *Notation on file copies of contract.* A notation of the assignment, giving the name and address of the assignee and the date upon which the contracting officer received the assignment and notice thereof from the assignee, shall be entered upon each copy of the contract in the files of the Coast Guard. The notation shall also be completed to state: "Assignment Approval (or Disapproval) by Commandant _____, 19__." The information necessary to complete the above statement will be furnished by the contracting officer as indicated in subparagraph (3) of this paragraph.

(c) *Liability of assignee.* In any case in which moneys due or to become due under any contract are or have been assigned, no liability of any nature of the assignor to the United States, or any department or agency thereof, whether arising from or independently from the contract, will create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount received by the assignee since July 1, 1950, under the assignment.

PART 120—BONDS AND GUARANTIES

Subpart 120.01—Bid Guaranties

Sec.	
120.01-1	Purpose of bid guaranties.
120.01-2	Form of guaranty.
120.01-3	Custody and return of bid guaranties.

Subpart 120.02—Performance and Payment Bonds

120.02-1	Purpose of performance and payment bonds.
120.02-2	When bonds are required.
120.02-3	Penal sum of performance bonds.
120.02-4	Penal sum of payment bonds.
120.02-5	Standard forms to be used.
120.02-6	Contracting officers authorized to examine and approve bonds.

AUTHORITY: §§ 120.01-1 to 120.02-6 issued under 62 Stat. 21, 41 U. S. C. 151-161.

SUBPART 120.01—BID GUARANTIES

§ 120.01-1 *Purpose of bid guaranties.* The purpose of a bid guaranty is to assure that the bidder will execute a contract in the event of acceptance of his bid. A bid guaranty may be required at

the discretion of the contracting officer when proposals involving formal contracts are solicited. When bid guaranties are required, they shall be taken in the penal sum of 5 percent of the bid price.

§ 120.01-2 *Form of guaranty.* The bid guaranty may be furnished in any one of the following forms:

(a) Standard Form 24 (Bid Bond) executed by an authorized bonding company (corporate surety).

(b) Standard Form 24 (Bid Bond) executed by two responsible persons (individual sureties). Neither the bidders themselves nor their employees, agents or partners may act as guarantors for the corporation if qualified by their individual property interests, exclusive of the stocks and bonds of the corporation.

(c) A certified check made payable to the Treasurer of the United States.

(d) United States bonds or notes in a sum equal at their par value to the required amount of the guaranty may be accepted in lieu of the guaranty if accompanied by a power of attorney in the form set out in the latest edition of Treasury Circular 154, authorizing the contracting officer to collect or sell such bonds in the case of default.

§ 120.01-3 *Custody and return of bid guaranties.* (a) United States bonds or notes, or certified checks, shall not be negotiated by field contracting officers, even in cases of default, except on directions from the Commandant (F). They will be retained in the custody of the contracting officer but will not be taken into official Treasury accounts.

(b) United States bonds, notes, and certified checks which are received with bids which are rejected shall be returned to the unsuccessful bidders without delay after award of the items covered by their bids.

(c) United States bonds, notes, and certified checks received with a bid which is accepted shall be retained until the covering contract and related surety bonds are in hand; then they shall be returned to the bidder without delay. However, if the bidder so requests, the bonds, notes or checks may be retained and be applied as part of the requisite performance bonds on his contract.

(d) When United States bonds, notes or certified checks are returned to bidders by hand to hand delivery, proper receipts will be obtained and filed in the contracting office; in other cases they shall be returned by registered mail and the receipt filed in the contracting office.

(e) Standard Form 24 (Bid Bond) forms part of the pertinent bid and shall remain affixed to the bid.

SUBPART 120.02—PERFORMANCE AND PAYMENT BONDS

§ 120.02-1 *Purpose of performance and payment bonds.* The purpose of a performance bond is to assure that the contractor will perform the work required under the contract. The purpose of a payment bond is to protect employees and suppliers of materials engaged on a contract to assure that they will receive monies due them from the contractor.

§ 120.02-2 *When bonds are required.* Performance bonds and payment bonds shall be required in connection with all formal contracts for construction work (including repairs and alterations) when the amount of the contract is for \$2,000 or more. This bond requirement for construction work applies to contracts for construction and/or repairs of vessels, shore structures, and aids to navigation. Performance bonds may also be required in connection with supply contracts when in the judgment of the contracting officer such a bond is required to protect the interests of the Government. A payment bond may also be required by the contracting officer in connection with a supply contract. The use of performance and payment bonds in connection with supply contracts is discretionary with the contracting officer, although good business judgment requires that all contracts for amounts in excess of \$25,000 should be covered by bonding requirements.

§ 120.02-3 *Penal sum of performance bonds.* In such amount as in the exercise of sound judgment of the contracting officer will adequately protect the Government. However, performance bonds for construction contracts shall be in the penal sum fixed for payment bonds.

§ 120.02-4 *Penal sum of payment bonds.* (a) 50 percent of the contract price where the contract is for \$1,000,000 or less.

(b) 40 percent of the contract price where the contract exceeds \$1,000,000 but is less than \$5,000,000.

(c) \$2,500,000 where the contract price is \$5,000,000 or more.

§ 120.02-5 *Standard forms to be used.* All performance bonds will be executed on Standard Form No. 25, and all payment bonds shall be executed on Standard Form No. 25-A.

§ 120.02-6 *Contracting officers authorized to examine and approve bonds.* Upon receipt of a bond given in support of a contract, the contracting officer shall ascertain that the bond tendered is in the penal sum required and that it properly describes the contract in support of which it was given. The contracting officer shall exercise caution to ascertain that the attorney-in-fact who executes a bond furnishes evidence to support his authority to execute the obligation. It is not necessary to refer the bond to the Commandant for approval prior to execution of the contract, provided the contracting officer makes the required examination as to sufficiency of amount, contract description, and authority of signature.

Dated: January 27, 1954.

[SEAL] MERLIN O'NEILL,
Vice Admiral, U. S. Coast Guard,
Commandant.

[F. R. Doc. 54-710; Filed, Feb. 2, 1954;
8:49 a. m.]

No. 23—7

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

BAYOU LACASSINE, LA.

Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U. S. C. 499), § 203.245 governing the operation of certain drawbridges where constant attendance of draw tenders is not required over navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

(j) *Waterways discharging into the Gulf of Mexico west of the Mississippi River.* (13-a) Bayou Lacassine, La.; Texas and New Orleans Railroad Company bridge near Hayes. At least 24 hours' advance notice required.

[Regs., Jan. 4, 1954, 823-ENGWO] (28 Stat. 362; 33 U. S. C. 499)

[SEAL] WM. E. BERGIN,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 54-711; Filed, Feb. 2, 1954;
8:49 a. m.]

TITLE 35—PANAMA CANAL

Chapter I—Canal Zone Regulations

PART 24—SANITATION, HEALTH, AND QUARANTINE

PROHIBITED IMPORTATIONS

Pursuant to the authority vested in the Governor by Rule 119qq of Executive Order No. 4314 of September 25, 1925, as amended by Canal Zone Order No. 15 of July 15, 1948 (35 CFR 24.102), § 24.102b, as adopted by Governor's Regulation March 5, 1952, 17 F. R. 2389, and amended by Governor's Regulation of November 19, 1952, 17 F. R. 10559, is hereby amended to read as follows:

§ 24.102b *Prohibited importations of cattle, sheep, etc., and meats; inspection of animals of prohibited importation on vessels intending to transit—denial of permission to transit.* (a) The importation into the Canal Zone from any country listed in § 24.102a of cattle, sheep and other ruminants or swine, domestic or wild (including the docking in any Canal Zone port of any vessel having on board as sea stores or otherwise such live animals from any such country), or of fresh, chilled or frozen beef, veal, mutton, lamb, or pork, is prohibited, except that such prohibition shall not apply (1) to meats that are imported in hermetically sealed cans processed in such a manner that they do not contain infectious virus of

the nature indicated, or (2) to cured or cooked meats, provided that all bones shall have been completely removed in the country of origin; that the meat shall have been held in an unfrozen, fresh condition for at least 3 days immediately following the slaughter of the animals from which it was derived; and that the meat shall have been thoroughly cured or shall have been thoroughly cooked and properly wrapped.

(b) No vessel having on board any animal or animals whose importation into the Canal Zone is prohibited under paragraph (a) of this section shall be permitted to transit the Canal until such animal or animals have been examined by appropriate health authorities of the Canal Zone Government. If, upon examination, any such animal or animals are found to be infected with a vesicular disease, or otherwise show symptoms characteristic of either foot and mouth disease or rinderpest, such vessel may be denied permission to transit the Canal.

(Sec. 1, 39 Stat. 527, as amended; 2 C. Z. Code 371, 372, 48 U. S. C. 1310)

Issued at Balboa Heights, Canal Zone,
January 26, 1954.

[SEAL] J. S. SEYBOLD,
Governor of the Canal Zone.

[F. R. Doc. 54-695; Filed, Feb. 2, 1954;
8:47 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 10902]

PART 3—RADIO BROADCAST SERVICES

TABLE OF ASSIGNMENTS; TELEVISION BROADCAST STATIONS

In the matter of amendment of § 3.606 *Table of assignments*, rules governing Television Broadcast Stations; Docket No. 10802.

1. The Commission has under consideration its notice of proposed rule making issued on December 11, 1953 (FCC 53-1629), and published in the *FEDERAL REGISTER* on December 10, 1953 (18 F. R. 8248), proposing to assign Channel 18 to Zanesville, Ohio, as requested by the Southeastern Ohio Television System in a petition filed November 6, 1953.

2. The time for filing comments in this proceeding expired January 11, 1954. No comments have been filed opposing the proposed amendment. In support of its request petitioner states that it is the permittee of Station WHIZ-TV operating on Channel 50 in Zanesville, Ohio, and that the station is not providing acceptable service in the areas which it expected to serve based on the predictions prepared in accordance with the Commission's rules. Petitioner urges that because of better receiver sensitivity and propagation characteristics at a lower UHF channel it could best serve the rugged and hilly areas in question by the utilization of a channel lower than Channel 50.

3. In the Sixth Report and Order, the Commission concluded that there was no basis in the record to distinguish between channels in the UHF band for the purpose of establishing a table of assignments. (See paragraph 337.) Petitioner concedes that in the present state of the art it is not possible to determine the precise improvement in coverage that could be expected from the use of higher powers or from the use of a lower UHF channel. The Commission is still of the view that no distinction should be made among the UHF channels for assignment purposes. Moreover, it is noted that petitioner's request to take into account local terrain factors and asserted differences between high and low channels does not comply with the requirements of § 3.686 of the rules for effecting general rule changes. However, in view of the fact that Channel 18 may be assigned to Zanesville without making any other changes in the table and that such additional assignment would bring the number of assignments in Zanesville in substantial conformance with the number accorded communities of similar size and importance, it is proposed that this additional assignment be made.

4. Authority for the adoption of the proposed amendment is contained in sections 4 (i), 301, 303 (c), (d), (f), and (r), and 307 (b) of the Communications Act of 1934, as amended.

5. In view of the foregoing: *It is ordered*, That effective 30 days after publication in the *FEDERAL REGISTER*, the table of assignments contained in § 3.606 of the Commission's rules governing television broadcast stations is amended as follows:

City:	Channel No.
Zanesville, Ohio.....	18—, 50+

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1084; 47 U. S. C. 301, 303, 307)

Adopted: January 27, 1954.

Released: January 28, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-715; Filed, Feb. 2, 1954;
8:50 a. m.]

[Docket No. 10623]

PART 9—AERONAUTICAL SERVICES

LIGHTER-THAN-AIR CRAFT FREQUENCIES

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 27th day of January 1954.

The Commission having under consideration its proposal in the above entitled matter which would amend Part 9 of its rules in order to permit the United States to put into effect certain portions of the Atlantic City (1947) Table of Frequency Allocations in accordance with the provisions of the agreement concluded at the Extraordinary Administrative Radio Conference (Geneva, 1951), by deleting from § 9.315 the frequencies

6615 kc. and 11,910 kc. as frequencies available for assignment to lighter-than-air craft and to aeronautical stations serving lighter-than-air craft; and

It appearing, that in accordance with the requirements of section 4 (a) of the Administrative Procedure Act, general notice of proposed rule making in this matter, which made provision for the submission of written comments by interested parties, was duly published in the *FEDERAL REGISTER* on August 13, 1953 (18 F. R. 4838) and that the period provided for the filing of comments has now expired; and

It further appearing, that no objections to the proposed amendment have been received; and

It further appearing, that the proposed amendment is in accordance with the authority contained in sections 303 (c), (f), and (r) of the Communications Act of 1934, as amended;

It is ordered, That effective March 22, 1954, § 9.315 of the Commission's rules governing aviation services is amended by deleting therefrom the frequencies 6615 kc. and 11,910 kc.

(Sec. 303, 48 Stat. 1083, as amended; 47 U. S. C. 303)

Released: January 28, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-716; Filed, Feb. 2, 1954;
8:50 a. m.]

PART 17—CONSTRUCTION, MARKING AND LIGHTING OF ANTENNA STRUCTURES

PARTICULAR SPECIFICATIONS TO BE USED FOR OBSTRUCTION MARKING AND LIGHTING

The Commission having under consideration the desirability of making certain editorial changes in § 17.22 (c) of its rules and regulations; and

It appearing, that § 17.22 (c) of the rules has been consistently applied by the Commission to require the installation of obstruction markings necessary to promote safety to air navigation pursuant to the Commission's responsibility

under section 303 (q) of the Communications Act of 1934, as amended, where painting or lighting is inadequate or otherwise infeasible; and

It further appearing, that in spite of this consistent interpretation, certain licensees have, nevertheless, alleged that § 17.22 (c) is ambiguous with reference to the requirements of obstruction marking other than painting and lighting; and

It further appearing, that certain editorial changes in the provisions of § 17.22 (c) would eliminate the alleged ambiguity and express the Commission's intent in the matter with absolute clarity; and

It further appearing, that the amendment adopted herein is editorial in nature, and, therefore, prior publication of notice of proposed rule making under the provisions of section 4 of the Administrative Procedure Act is unnecessary, and the amendment may become effective immediately; and

It further appearing, that the amendment adopted herein is issued pursuant to authority contained in section 4 (i), 5 (d) (1) and 303 (q), (r) of the Communications Act of 1934, as amended;

It is ordered, This 27th day of January 1954, that effective immediately, § 17.22 (c) of the Commission's rules and regulations is revised as set forth below:

(c) However, where antenna installations are of such a nature that their painting and lighting in accordance with these specifications are confusing or endanger rather than assist airmen or are otherwise inadequate, the Commission will specify the type of painting and lighting or other marking to be used in the individual situation.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended, sec. 5, 66 Stat. 713; 47 U. S. C. 303, 155)

Released: January 28, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-717; Filed, Feb. 2, 1954;
8:50 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 924]

[Docket No. AO-225-A4]

HANDLING OF MILK IN DETROIT, MICHIGAN MARKETING AREA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED AMENDMENTS TO ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the

proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was conducted at Detroit, Michigan, on July 27-28, 1953, pursuant to notice thereof which was issued on July 11, 1953 (18 F. R. 4071).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Assistant Administrator, Production and Marketing Administration, on November 20, 1953, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of filing such recommended decision and opportunity to file written exceptions thereto was published in the

FEDERAL REGISTER on November 26, 1953 (18 F. R. 7540).

The material issues and the findings and conclusions of the recommended decision (18 F. R. 7540; F. R. Doc. 53-9956) are hereby approved and adopted as the material issues and the findings and conclusions of this decision as if set forth in full herein subject to the following revisions:

1. In the fourth sentence of the first paragraph beginning in Column 2, page 7541, delete the phrase "provision requiring" and substitute therefor the word "fact".

2. In column 3, page 7543, the third paragraph should be changed to read as follows:

(5) *Class prices.* The rate of the location adjustments which applies as a credit to handlers on milk moved for Class I use and to milk delivered by producers to country plants should be changed to a rate of 1 cent per 10 miles at distances of more than 50 miles instead of 1 cent per 8 miles at distances of more than 49 miles and should progress indefinitely instead of reaching a maximum of 26 cents, no location adjustment should be allowed on milk disposed of as Class I from plants located within the marketing area, the Class II price provisions should not be changed, and no credit should be allowed on such quantities of Class II milk as it may be necessary for a handler to move from the point of delivery by producers to manufacturing plants.

3. On page 7544 delete the second paragraph beginning in Column 1 and substitute therefor the following:

An alternative proposal was offered by Michigan Milk Producers Association. It would modify the zone schedule for distances of 51 miles or over by using a rate of 1 cent for each additional 10 miles. The proponent association transports a greater volume of milk than any other firm in the market. Essentially the same rates as are now specified in the order have been in effect for about 12 years. During that time experience has shown that increases in wage rates and other costs have been more than offset by other operating economies, and the association charges two cents less than the established rates to city plants which purchase substantially their full supply, in tank load lots. This experience clearly demonstrates the desirability of reducing the rate of location adjustments.

No data were presented on point-to-point costs of transporting milk. It appears most logical, however, to make the rate reduction effective uniformly at all distances beyond the first zone. For the sake of convenience the outer-boundary of the first zone is extended one mile to include plants located more than 34 miles but less than 50 miles instead of less than 49 miles, there being no plants located in the area affected by this change.

In the first zone the initial costs of providing equipment, loading, unloading, and driving through comparatively heavy traffic are reflected in the 14-cent rate. Beyond that zone the difference in cost is primarily that of driving additional distances over open highway

and it is this rate which is reduced by increasing the zone distances to 10 miles per one cent.

4. Change the last sentence beginning in column 1, page 7544, to read as follows: "To properly price milk at the more distant location, the revised rate of 1 cent per each additional 10 miles should progress in like manner to include any distance at which a handler's plant may be qualified."

Rulings. Within the period reserved for filing exceptions to the recommended decision, exceptions were submitted on behalf of interested parties. These exceptions have been fully considered and to the extent to which the findings and conclusions of this decision are at variance with the exceptions, such exceptions are hereby overruled.

Determination of representative period. The month of November 1953, is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of amendments to the order regulating the handling of milk in the Detroit, Michigan, marketing area in the manner set forth in the attached amending order is approved or favored by producers who during such period were engaged in the production of milk for sale in the marketing area specified in such marketing order, as hereby amended.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Detroit, Michigan, Marketing Area," and "Order Amending the Order, as Amended, Regulating the Handling of Milk in the Detroit, Michigan, Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

It is hereby ordered. That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order, as amended, and as hereby proposed to be further amended by the attached order which will be published with this decision.

This decision filed at Washington, D. C., this 29th day of January 1954.

[SEAL] JOHN H. DAVIS,
Assistant Secretary of Agriculture.

Order Amending the Order, as Amended, Regulating the Handling of Milk in the Detroit, Michigan, Marketing Area

§ 924.0 Findings and determinations. The findings and determinations herein-

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

after set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act, of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Detroit, Michigan, on July 27-28, 1953, upon certain proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Detroit, Michigan, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(2) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area and the minimum prices specified in the order, as amended, and as hereby further amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Detroit, Michigan, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended; and the aforesaid order, as amended, is hereby further amended as follows:

1. In § 924.6 (b) delete the phrase "or of Wayne County".

2. Add a paragraph "(c)" to § 924.6 as follows:

(c) A cooperative association with respect to milk customarily received by a handler, as described under paragraphs (a) or (b) of this section, which is diverted to a person not a handler for the account of the association.

3. In § 924.41 (a) insert following the phrase "all skim milk" the following: "(including the skim milk equivalent of concentrated products)".

4. Amend § 924.41 (b) to read as follows:

(b) Class II utilization shall be all skim milk and butterfat (1) disposed of for fluid consumption as sweet or sour cream or any mixture of cream and milk or skim milk containing 10 percent or more of butterfat; (2) used to produce sterilized flavored milk drinks, ice cream or ice cream mix, cheese (including cottage cheese), dried whole milk, nonfat dry milk solids, evaporated or condensed whole or skim milk, sweetened or unsweetened, disposed of in bulk or in hermetically sealed cans, egg nog, butter; (3) disposed of as livestock feed or skim milk dumped subject to prior notification to and inspection (at his discretion within 18 hours) by the market administrator; (4) in shrinkage of producer milk up to 2 percent of receipts from producers; or (5) in shrinkage of other source milk.

5. Change § 924.43 (c) to read as follows:

(c) Producer milk transferred in bulk by a cooperative association to a plant as described in § 924.6 (a), except a plant as described in § 924.101, shall be deducted before classification of producer milk at the transferor's plant and shall be included in producer milk classified at the plant of the transferee handler.

6. In § 924.46 (a) change the reference to "§ 924.41 (c) (3)" to read "§ 924.41 (b) (4)".

7. In § 924.60 (a) change the phrase "Subject to paragraph (c)" to read "Subject to paragraphs (b) and (c)" and change the reference to "§ 924.46 (c)" to read "§ 924.46 (e)".

8. Amend § 924.60 (c) to read as follows:

(c) A handler who operates a plant as described in § 924.6 (b) (or § 924.6 (a) and located more than 34 miles by shortest highway distance from the boundary of the market area) and who disposes of, from such plant for Class I utilization (other than to a handler), milk received from producers, and a handler who receives at a plant described in § 924.6 (a) producer milk moved in bulk from a plant described in § 924.6 (b) (or § 924.6 (a) and located more than 34 miles by shortest highway distance from the boundary of the marketing area), which milk is utilized as Class 1 (prorating to such milk the utilization of all producer milk received at the plant) shall receive a credit with respect to milk so disposed of or so received and utilized at a rate determined by the market administrator as follows:

Shortest road distance from Detroit City Hall:	Rate per hundred- weight
More than 34 miles but not more than 50 miles.....	\$0.14
More than 50 miles but not more than 60 miles.....	.15

Add 1 cent for each 10 miles or fraction thereof over 60 miles.

9. Amend § 924.62 (b) to read as follows:

(b) Subtracting not less than 6 cents nor more than 7 cents.

10. In § 924.64 (e) delete the first sentence and substitute therefor the fol-

lowing: "Subtract not less than 6 cents nor more than 7 cents."

11. Add a paragraph (e) to § 924.70 as follows:

(e) A producer who does not forfeit his base pursuant to § 924.71 (c) but who fails to deliver milk on at least 122 days of the August 1 through December 31 period shall have his base for the 12 months beginning the following February 1 computed by dividing the total pounds shipped during the period by 122.

12. Amend § 924.71 (b) (2) to read as follows:

(2) Bases may be held jointly and if such joint holding is terminated the base may be transferred as specified in writing to the market administrator.

13. Add a subparagraph (3) to § 924.71 (b) as follows:

(3) Two or more producers with bases may combine those bases upon the formation of a bona fide partnership.

14. Amend § 924.71 (c) to read as follows:

(c) A producer who does not deliver milk to any handler for 45 consecutive days shall forfeit his base except that a producer who suffers the complete loss of his barn as a result of fire or windstorm may retain his base without loss for six months.

15. In § 924.72 insert after the phrase "first day of the month" the phrase "specified but not earlier than the first day of the month".

16. Delete the period at the end of § 924.10, and add the following: "and shall include the skim milk equivalent of concentrated products classified as Class I pursuant to § 924.41 (a)."

[F. R. Doc. 54-734; Filed, Feb. 2, 1954; 8:54 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Docket No. 10889]

PRACTICE AND PROCEDURE

ESTABLISHMENT OF FEES FOR COMMISSION'S LICENSING AND SIMILAR ACTIVITIES

1. Notice is hereby given of rule making in the above entitled matter.

2. Pursuant to the provisions of the Independent Offices Appropriation Act of 1952 (5 U. S. C., sec. 140), set out in Appendix A below, Congress has stated that work performed by Government agencies in connection with the issuance of franchises, licenses, permits, certificates, registrations and the like for any person, except those engaged in the transaction of official business of the Government should, to the full extent possible, be self-sustaining. In order to bring about the accomplishment of this objective, section 140 of Title 5 authorizes the head of each agency to prescribe by regulation such fees and charges as he shall determine to be fair and equitable "taking into consideration direct and indirect costs to the Govern-

ment, value to the recipient, public policy or interest served, and other pertinent facts."

3. The enabling legislation referred to above also provides that the fees and charges shall be as uniform as practicable throughout the Government and shall be subject to such policies as the President may prescribe. In view of this provision, the Commission refrained from taking any action looking toward the establishment of a schedule of fees, pending consideration of the matter on an over-all Government basis by the Bureau of the Budget operating in behalf of the President. Such a study has now been completed, and the Bureau of the Budget has issued Circular No. A-25 relating to "Fees for licensing, registration, and related activities" which sets out, in some detail, uniform standards to be applied by the various departments and agencies of the Government in implementing the provisions of section 140, Title 5 of the United States Code.

4. The attached proposed schedule of fees for the various Commission licensing activities has been drafted in compliance with the provisions of the Budget Bureau Circular. In order that interested parties may be advised as to the basis upon which the proposed schedule of fees has been prepared, the following information is provided:

(a) The Commission has determined that all of its activities including the issuance, renewal, modification, transfer, or termination of any license or certificate must be characterized as licensing activities for which appropriate fees shall be charged with the exception of the enforcement activities of the Field Engineering and Monitoring Bureau and, to a limited extent, in the Broadcast and Safety & Special Radio Services Bureaus as well, and with the exception of the non-certification common carrier regulatory activities performed by the Common Carrier Bureau. And, in accordance with the policy of both the Congress and the over-all government program, the Commission's licensing activities for which reimbursement charges are to be levied include both the direct and indirect costs of such activities. It has been determined that during the Fiscal Year 1953 approximately 45 percent of the Commission's entire expenditures were in fact directly or indirectly related to licensing activities. This percentage of the Commission's budget has been utilized as the full cost recovery base from which the fees set forth in the attached schedule have been derived.

(b) In determining the proper groups or categories of licensing fees the Commission has made use of the primary functional divisions into which the Commission has been organized and has calculated separate fees for the licensing activities of each of the 4 functional bureaus as well as for the special licensing activities in the Office of the Chief Engineer. By such a segregation it has been possible to avoid any subsidization of one type of licensing activity by another. At the same time, where personnel of one of the Commission's bureaus have performed services which are related to the licensing functions for which another bureau bears primary re-

sponsibility, the expenditures for such activities have, for purposes of the attached schedule, been allocated to the licensing functions of the latter bureau. Thus, the antenna survey and initial inspection activities of the Field Engineering and Monitoring Bureau, which are directly related to the licensing of broadcast stations, have been included in calculating the expenses of processing broadcast applications. Similarly, the expenses of such separate offices of the Commission, as the Office of Opinions and Review and Office of Hearing Examiners, have been allocated among the various functional bureaus at a ratio approximating our budget estimates as to the relative amount of time spent by such offices on the several types of licensing activities.

(c) Within each bureau the Commission has endeavored to avoid any undue multiplicity of separate charges. It has done this both upon the belief that such general grouping of related and similar licensing activities will aid both the Commission and the affected parties in complying with the new provisions with a minimum amount of additional time and effort, and because of our recognition that no accurate allocation of exact costs between the various sub-categories of the Commission's licensing activities is possible. Accordingly, and in conformity with the provisions of the Budget Bureau's Circular, fees for different services within each particular bureau have been limited to a few broad comparable classes of actions.

(d) In the attached schedule no direct fees are proposed with respect to the institution of rule making proceedings; the cost of such proceedings has been considered as a portion of the normal costs of license processing in the areas covered by such rules. Moreover, no fees are proposed to be charged with respect to revocations or modifications of station licenses or suspension of operators' licenses initiated by the Commission. Finally, it is proposed to exempt from the category of applications for which a fee will be charged for processing, applications having as their sole objective the modification of existing licenses to conform with the requirements of the EARC program. This latter exception was made because the Commission believes it would manifestly not be in the public interest to penalize persons who voluntarily cooperate with the Commission in carrying out the EARC program, or similar programs, when no fees would be assessed against those persons who refuse such voluntary cooperation and are required to modify their licenses on the basis of action initiated by the Commission itself.

(e) With the exceptions indicated in the paragraph above it is proposed to charge a fee in connection with all licensing activities of the Commission. In all cases the fees have been calculated upon the basis of recovering approximately the full costs involved in carrying out the particular licensing activity in question.

5. *Proposed schedule for broadcast services.* It is proposed to divide all applications for authorizations in the broadcast services into two categories.

For the first of these categories, involving major analysis and action by the Commission a fee of three hundred twenty-five dollars (\$325) would be charged. For all other applications in the broadcast services a fee of fifty dollars (\$50) would be charged.

A. Major broadcast applications; fee \$325.
(1) AM, FM, and television facilities; applications for:

(a) Construction permits for new stations.
(b) Modification of construction permits or modification of licenses involving any of the following types of action:

i. Change in station power.
ii. Change in station frequency.
iii. Change in station location.
iv. Change in mode of operation (including any change in the antenna pattern or hours of operation).

(c) Licenses to cover new stations or modifications of construction permits listed under (b) above.

(d) Renewals of licenses.
(e) Assignment or transfer of permits or licenses.

(f) Special Service Authorizations covered by § 1325 of the Commission's rules.

(2) International broadcast stations—applications for:

(a) Construction permits for new stations.
B. Minor broadcast applications; fee \$50.

(1) All applications relating to auxiliary broadcast stations (Part 4 of the Commission's rules).

(2) All applications with respect to international broadcast stations, except applications for construction permits for new stations.

(3) All applications for construction permits, or for modification of construction permits, or licenses for AM, FM, and television stations other than those listed in "A" above.

(4) Applications under section 325 (b) of the Communications Act of 1934, as amended.

6. *Proposed schedule of fees for Safety and Special Radio Services.* It is proposed that a fee of ten dollars (\$10) be charged for the processing of all types of applications in these services including original applications, renewals, modifications, etc., with the exception of applications in the Amateur, Disaster, and RACES services, for which a charge of three dollars (\$3) will be assessed. The three dollar charge with respect to the amateur service is for each application filed whether for station license, operator license, change of address, renewal, etc., or any combination thereof. The lesser fee for the processing of applications in the Amateur, Disaster, and RACES services is because the Commission believes that it would be contrary to the public interest, to require applicants therefor to pay the full amount that would be required if applications in such services were grouped, for purposes of this notice, with the other services coming within the jurisdiction of the Safety and Special Radio Services Bureau.

7. *Proposed schedule of fees for experimental services.* It is proposed that a fee of twenty dollars (\$20) be charged for the processing of all applications, both formal and informal, filed in this service in accordance with the provisions of Part 5 of the Commission's rules.

8. *Proposed schedule of fees for type acceptance and approval.* It is proposed that a fee of one hundred dollars (\$100) be charged for each application for type acceptance of equipment; that a fee of

six hundred dollars (\$600) be charged for all applications for type approval filed in accordance with Part 18 of the rules, and that a fee of fifteen hundred dollars (\$1,500) be charged for the processing of any application for type approval covered by Parts 3, 8, or 19 of the Commission's rules.

9. *Proposed schedule of fees for operator licenses.* It is proposed that a fee of three dollars (\$3) be charged in connection with the processing of all applications for commercial operator licenses regardless of class, including original applications, applications for renewal either by examination or by service under waiver of § 13.28 of the rules, requests for duplicate licenses, endorsement on all outstanding licenses, and verification cards requested at any time other than upon the issuance of a license or a renewal thereof. It is also proposed that a fee of three dollars (\$3) be charged for processing an application for a restricted radio telephone operator's license.

10. *Proposed schedule of fees for ship inspections.* It is proposed to charge a fee of thirty dollars (\$30) for each application filed for the following type ship inspections even though an inspector may be required to visit a ship more than once before a certificate is issued:

(a) U. S. Compulsory Ocean-going Telegraph.

(b) U. S. Compulsory Ocean-going Telephone.

(c) U. S. Compulsory Great Lakes Telephone.

(d) Foreign Compulsory Ocean-going Telegraph and Telephone.

(This does not change in any way the existing requirement under section 4 (f) (3) of the Communications Act, as Amended, that the U. S. Government be reimbursed for extra compensation resulting from overtime services in connection with ship inspections.)

11. *Proposed schedule of fees for Common Carrier services.* It is proposed to charge the following fees in the Common Carrier services:

(a) Applications filed by telephone companies under section 221 of the Act for acquisitions, consolidations, etc. \$350

(b) Formal applications filed by telephone companies under section 214 of the Act for the construction or extension of a line. 150

(c) Applications for exemptions from Commission jurisdiction under Title II of the Act. 150

(d) All other applications filed by common carriers under Titles II and III of the Act, except applications filed by carriers under Parts 7, 8, 10, and 14 of the Commission's Rules and Regulations which are covered by the fees set forth in the schedule of fees for the Safety and Special Radio Services. 30

12. It is contemplated that this schedule be revised biennially, and adjustments made where necessary to conform the fees charged to actual experience in the light of new or changed circumstances.

13. Each application for which a fee is prescribed must be accompanied by a remittance in the full amount of the fee. In no case will an application be accepted for filing or processed prior to payment

of the full amount specified. Applications for which no remittance is received, or for which an insufficient amount is received, may be returned to the applicant.

14. Provision will be made for a Cashier's Office to be located in the Commission's Offices in Washington, D. C., for the purpose of accepting application fees presented in person or submitted through the mail. Applications received in Washington will be processed through the cashier's office and stamped with the amount received prior to being forwarded to the appropriate bureau or staff office for further handling. Such payments may be made in United States legal tender, Domestic or International Postal Money Orders, or checks payable to the Federal Communications Commission. All fees collected will be paid into the United States Treasury as miscellaneous receipts in accordance with the provisions of section 140 of Title 5 of the U. S. Code.

15. For the convenience of applicants presenting applications at field offices in person or by mail, arrangements will also be made for the acceptance of money orders and checks at such field offices, and in payment for such types of applications, as provided for in the Commission's rules.

16. Receipts will not be issued for payments sent through the mails. The money order procedure provides a receipt and canceled checks constitute a receipt for payments made in this manner. Receipts will be furnished upon request only in the case of payments made in person. The sending of cash through the mails is done entirely at the risk of the sender.

17. No refunds of fees will be made except in the case of payments in excess of the fee prescribed in the Commission's rules.

18. No radio operator examinations will be given prior to filing of an application and payment of the proper fee at an appropriate Commission office. Such applications and fees will only be accepted at District and Sub-District offices. They will not be accepted at quarterly, semiannual or annual examination points in cities other than those in which District and Sub-District offices are located.

19. The proposed amendments to the rules are issued pursuant to section 4 (i) of the Communications Act, section 140 of Title 5 of the U. S. Code, and Budget Bureau Circular A-25.

20. Any interested party who is of the opinion that the proposed amendments should not be adopted in the form set forth herein and any person desiring to support this proposal may file with the Commission on or before April 1, 1954, a written statement or brief setting forth his comments; replies to such comments may be filed within 10 days from the last date for filing original comments. The Commission will consider all comments and briefs presented before taking final action in this matter.

21. In accordance with the provisions of § 1.764 of the Commission's rules, an original and 14 copies of all statements,

briefs, or comments filed shall be furnished the Commission.

Adopted: January 27, 1954.

Released: January 28, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] WM. P. MASSING,
Acting Secretary.

APPENDIX A

(5 U. S. C., Sec. 140)

It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency (including wholly owned Government corporations as defined in the Government Corporation Control Act of 1945) to or for any person (including groups, associations, organizations, partnerships, corporations, or businesses), except those engaged in the transaction of official business of the Government, shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation (which, in the case of agencies in the executive branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts: Provided, that nothing contained in this Title shall repeal or modify existing statutes prohibiting the collection, fixing the amount, or directing the disposition of any fee, charge or price; Provided further, that nothing contained in this title shall repeal or modify existing statutes prescribing bases for calculation of any fee, charge or price, but this proviso shall not restrict the redetermination or recalculation in accordance with the prescribed bases of the amount of any such fee, charge or price.

[F. R. Doc. 54-712; Filed, Feb. 2, 1954;
8:49 a. m.]

[47 CFR Part 3]

[Docket No. 10888]

TELEVISION BROADCAST STATIONS

TABLE OF ASSIGNMENTS

1. Notice is hereby given that the Commission has received a proposal for rulemaking in the above-entitled matter.

2. The Commission has before it a petition filed on December 29, 1953, by the Hills Broadcasting Company, Rapid City, South Dakota, and now made part of this docket, requesting an amendment of § 3.606 Table of assignments rules governing television broadcast stations as follows:

City	Channel No.	
	Present	Proposed
Rapid City, S. Dak.....	7+, 15-	3+, 7+, 15-

¹ Separate views of Commissioner Henneck and concurring statement of Commissioner Bartley filed as part of the original document.

3. In support of its requested amendment, petitioner urges that because of the rugged nature of the terrain in the area that utilization of the UHF assignment provided by the Commission at Rapid City is not feasible. Further, it is asserted that the proposed change accords with the Commission's rules and that the additional assignment of Channel 3 to Rapid City would eliminate the need for a comparative hearing on Channel 7 and would thus make television service available in the area at a much earlier date. With respect to petitioner's contention that in view of the rugged terrain the utilization of a UHF channel in the area is infeasible, it should be noted that the Commission in the Sixth Report concluded that there were no reliable data and methods for evaluating the effect of rugged terrain on propagation of television assignments. Moreover, the Commission in § 3.606 of its rules provided explicit procedures for introducing data concerning measurements seeking to effect changes in our rules and standards. Accordingly, we find no merit in the contention of the petitioner with respect to the infeasibility of the utilization of the UHF channel. However, in view of the fact that Channel 3 may be assigned to Rapid City without making any other changes in the table and in conformance with our rules it is proposed that this additional assignment be made.

4. Authority for the adoption of the proposed amendments is contained in sections 4 (i), 301, 303 (c), (d), (f), and (r) and 307 (b) of the Communications Act of 1934, as amended.

Any interested party who is of the opinion that the amendment proposed by petitioner should not be adopted or should not be adopted in the form set forth herein may file with the Commission on or before February 26, 1954, a written statement or brief setting forth his comments. Comments in support of the proposed amendment may also be filed on or before the same date. Comments or briefs in reply to the original comments may be filed within 10 days from the last day for filing said original comments or briefs. The Commission will consider all such comments that are submitted before taking action in this matter, and if any comments appear to warrant the holding of a hearing or oral argument, notice of the time and place of such hearing or oral argument will be given.

6. In accordance with the provisions of § 1.764 of the Commission's rules and regulations, an original and 14 copies of all statements, briefs or comments shall be furnished the Commission.

Adopted: January 27, 1954.

Released: January 28, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-714; Filed, Feb. 2, 1954;
8:50 a. m.]

[47 CFR Parts 7, 8]

[Docket No. 10887]

STATIONS ON LAND AND SHIPBOARD IN
MARITIME SERVICESTYPE ACCEPTANCE AND SPECIFIC LIMITATIONS
FOR SPURIOUS EMISSIONS

1. Notice is hereby given of proposed rule making in the above entitled matter. The rules proposed to be adopted are set forth below.

2. A considerable amount of interference is being caused by harmonic radiation from ship transmitters. As an example, second harmonic radiation from ship transmitters operating on the inter-ship frequency 2738 kc is causing harmful interference on 5476.5 kc—aeronautical mobile frequency—and is a hazard to civil aviation. Furthermore, because of this interference it is not possible fully to use the frequency 5476.5 kc for aeronautical mobile communications in accordance with the terms of the E. A. R. C. agreement (Geneva, 1951). Failure to put into use 5476.5 kc naturally blocks the assignment of other frequencies and therefore constitutes a serious obstacle to the Commission's program of bringing into force the Atlantic City Table of Frequency Allocations pursuant to the timetable established in the E. A. R. C. Agreement.

3. Part 8 of the Commission's rules now contains a table of limitations for spurious emissions including harmonics. However, this table is applicable only to ship radiotelephone transmitters operating on frequencies above 30 Mc. In the interest of safeguarding aeronautical communication in particular and in order to minimize interference in general, it is proposed to extend (with certain relatively minor exceptions) the applicability of this table to all ship radiotelegraph and radiotelephone transmitters.

4. To facilitate the enforcement of this regulation, it is further proposed to require that all ship radiotelephone transmitters be type accepted by the Commission. Type acceptance is a form of approval given by the Commission which is based on the examination of certified test data submitted by the manufacturer or the licensee of the transmitter. It may be expected therefore, that the use of type accepted transmitters will ultimately substantially reduce the number of cases of interference. The proposed rules also provide for gearing in the existing requirements for an automatic modulation limiter to the type acceptance program.

5. Provision is made in the proposed rules for a transition period to permit manufacturers to bring their designs and production into line with the new requirements and to permit licensees to modify or replace non-complying equipment.

6. Changes are also made in § 8.138 to eliminate a reference to deleted § 8.136 and to provide a reference to the procedure to be followed in order to apply for type approval of ship radar equipment.

7. The proposed amendment is issued under the authority contained in sec-

tions 4 (i), 303 (c), (e), (f), and (r) of the Communications Act of 1934, as amended.

8. Any interested party who is of the opinion that the proposed amendment should not be adopted or should not be adopted in the form set forth herein, may file with the Commission on or before April 2, 1954, a written statement or brief setting forth his comments. Replies to such comments may be filed within ten days from the last day for filing original comments. Interested persons supporting the proposed amendment may file statements or briefs in a similar manner. The Commission will consider all comments and briefs presented to it before taking final action in this matter.

9. In accordance with the provisions of § 1.764 of the Commission's rules, an original and 14 copies of all statements, briefs or comments should be furnished the Commission.

Adopted: January 27, 1954.

Released: January 28, 1954.

[SEAL] FEDERAL COMMUNICATIONS
COMMISSION,
WM. P. MASSING,
Acting Secretary.

1. Sections 7.8 (e) and 8.7 (e) are amended to read as follows:

(e) *Spurious emission.* Any emission from a station at a frequency or frequencies outside a frequency band of emission authorized for that station. A frequency band of emission is a frequency band of which the two designated limiting frequencies are established by an emission bandwidth referred to a particular carrier frequency.*

2. Section 8.108 is amended by revising the last sentence to read as follows: "Any spurious emissions shall be maintained at the lowest practicable level and in no event exceed the specific applicable limits set forth in Subpart E of this part."

3. Delete § 8.136 and substitute the following new text:

§ 8.136 *Spurious radiation limitations.* (a) Spurious emission from any transmitter authorized in a ship station license or marine utility station license (other than a developmental station license) with the exception of lifeboat portable and non-portable transmitters, shall, as a minimum, when operating in reference to assigned frequencies below 500 Mc, be attenuated as follows:

(1) Any emission appearing on a frequency removed from the carrier frequency by at least 50 percent but not more than 100 percent of the authorized emission bandwidth shall be attenuated not less than 25 decibels below the level of the unmodulated carrier.

(2) Any emission appearing on a frequency removed from the carrier fre-

quency by at least 100 percent of the authorized emission bandwidth shall be attenuated below the level of the unmodulated carrier by not less than the amount shown in the following table:

Maximum authorized transmitter-power as specifically defined in § 8.7 (i):	Attenuation (decibels)
3 watts or less.....	40
Over 3 watts up to and including 150 watts.....	60
Over 150 watts up to and including 600 watts.....	70
Over 600 watts.....	80

(b) If spurious emission causes harmful interference, the Commission may, in its discretion, require that the radiation be attenuated beyond the values set forth in paragraph (a) of this section to alleviate the interference.

4. Amend § 8.137 as follows:

a. Change paragraph (a) to read as follows:

(a) (1) In order to obtain type acceptance, each radiotelephone transmitter shall have incorporated a device that will automatically prevent modulation in excess of 100 percent. This requirement, however, shall not apply to transmitters with an authorized transmitter power of three watts or less.

(2) In the event the operation of any radiotelephone transmitter causes harmful interference to the service of any station by reason of over modulation, the Commission may, in its discretion, require that the use of such transmitter be discontinued until it has been provided with a device that will automatically prevent modulation in excess of 100 percent.

b. Amend paragraph (c) to read as follows:

(c) Each radiotelephone transmitter authorized in a ship station or marine utility station license (other than transmitters authorized solely for developmental stations) shall, in addition to meeting all other applicable requirements, comply with the following operating condition:

(1) When radiating class F1, F2, or F3 emission on each marine radio-channel within the frequency band 35 to 44 Mc, or within the frequency band 156.25 to 157.45 Mc with 100 percent* modulation applied, the frequency deviation* shall not exceed 15 kc.

5. Section 8.138 is amended by making the following changes:

a. At the end of the first sentence of paragraph (a) add the following: " * * * pursuant to the type approval procedure set forth in Part 2 of this subchapter."

b. Delete subparagraph (3) of paragraph (b).

6. A new § 8.139 is added to read as follows:

§ 8.139 *Acceptability of radiotelephone transmitters for licensing.* (a) Each radiotelephone transmitter author-

* Dissenting statement of Commissioner Geo. E. Sterling filed as part of the original document.

* For the purpose of this definition, when a carrier is not present, a frequency normally coinciding with the center of the frequency band occupied by the emission is substituted therefor.

* The related rules of Part 2 are the subject of proposed rule making in Docket No. 10798.

ized in a ship station or marine-utility station license (other than transmitters authorized solely for developmental stations) must be type-accepted by the Commission except that:

(1) This requirement shall not become applicable to such radiotelephone transmitters for use and operation on frequencies below 30 Mc until requested to be authorized in an initial or renewed license granted by the Commission after December 31, 1954;

(2) This requirement shall not apply to any transmitter capable of operation exclusively at a frequency or frequencies above 30 Mc which was first authorized in a particular station license for use in the maritime mobile service granted in behalf of a particular licensee prior to November 1, 1952, when that transmitter

is authorized in a ship station license or a marine-utility station license granted in behalf of the same licensee and has a date of expiration not later than December 31, 1954.

(b) Any manufacturer of a radiotelephone transmitter to be built in quantity for use in ship or marine-utility stations may request type acceptance for such transmitter by following the type acceptance procedure set forth in Part 2¹ of this subchapter. Such transmitter, if accepted, will be included on the Commission's "Radio Equipment List, Part C, List of Equipment Acceptable for Licensing". Copies of this list are available for inspection at the Commission's office in Washington, D. C. and at each of its field offices.

(c) Type acceptance of a radiotelephone transmitter may also be requested

by an applicant for related station authorization by following the type acceptance procedure set forth in Part 2¹ of this subchapter. Such transmitters, if accepted, will not normally be included on the Commission's "Radio Equipment List, Part C, List of Equipment Acceptable for Licensing" but will be individually enumerated on the station authorization.

(d) Additional rules with respect to type acceptance are set forth in Part 2¹ of this subchapter. Those rules include information with respect to withdrawal of type-acceptance, modification of type-accepted equipment and limitations on the finding upon which type acceptance is based.

[F. R. Doc. 54-713; Filed, Feb. 2, 1954; 8:50 a. m.]

NOTICES

CIVIL AERONAUTICS BOARD

[Docket No. SA-288]

ACCIDENT OCCURRING NEAR SHREVEPORT, LA.

NOTICE OF HEARING

In the matter of investigation of accident involving aircraft of United States Registry N 4949N, which occurred near Shreveport, Louisiana, on January 10, 1954.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly section 702 of said act, in the above-entitled proceeding that hearing is hereby assigned to be held on February 10, 1954, at 9:00 a. m. (local time) in the Washington Youree Hotel, 401 Edward Street, Shreveport, Louisiana.

Dated at Washington, D. C., January 26, 1954.

[SEAL] HAROLD G. CROWLEY,
Presiding Officer.

[F. R. Doc. 54-729; Filed, Feb. 2, 1954; 8:53 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

CHIEF, SAFETY AND SPECIAL RADIO SERVICE BUREAU

DELEGATION OF AUTHORITY TO ACT ON CERTAIN CLASSES OF APPLICATIONS OR REQUESTS

In the matter of delegation of authority to the Chief, Safety and Special Radio Services Bureau to act on certain classes of applications or requests for exemption of ships from the radio provisions of section 352 (b) of the Communications Act and Chapter IV of the Safety Convention.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 27th day of January 1954;

The Commission having under consideration the above-captioned matter;

It appearing, that section 0.144 (d) of the Commission's rules authorizes the Chief, Safety and Special Radio Services Bureau or, in his absence, the Acting Chief of said Bureau, to act upon applications or requests for emergency and renewal exemptions of ships, and initial exemptions of ships of less than 100 gross tons, pursuant to the provisions of section 352 (b) of the Communications Act and Article 28 of the Safety Convention; and

It further appearing, that the reference in section 0.144 (d) to "Article 28 of the Safety Convention" is obsolete and should be modified to conform with the Safety Convention now in force; and

It further appearing, that from time to time the Commission has received applications for exemption filed in behalf of vessels participating in oil well drilling operations in the Gulf of Mexico, and that the routes and conditions of the voyages of the vessels, and other circumstances, in a number of subsequent cases have been substantially the same as those in cases previously decided by the Commission en banc; and

It further appearing, that in order to facilitate action upon applications for exemption for which a precedent has been set, it is appropriate that authority to take action with respect to such applications be delegated to the staff; and

It further appearing, that the amendment herein ordered is procedural and editorial in nature and therefore, compliance with the public rule making procedure prescribed by section 4 of the Administrative Procedure Act is not required and for the same reason the amendment may be made effective immediately;

It is ordered, Under authority contained in sections 4 (i) and 303 (r) of the Communications Act of 1934, as

¹The related rules of Part 2 are the subject of proposed rule making in Docket No. 10798.

amended, that effective immediately, section 0.144 (d) of Part 0 of the Commission's rules is amended to read as follows:

(d) Applications or requests for exemption, pursuant to the provisions of section 352 (b) of the Communications Act and Regulation 5, Chapter IV of the Safety Convention, as follows:

(1) Emergency and renewal exemptions of ships;

(2) Initial exemptions of ships of less than 100 gross tons;

(3) Exemptions of ships operated in the Gulf of Mexico which participate in oil well drilling operations when the circumstances are substantially the same as those in precedent cases decided by the Commission en banc.

Released: January 28, 1954.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-727; Filed, Feb. 2, 1954; 8:52 a. m.]

CHIEF, SAFETY AND SPECIAL RADIO SERVICES BUREAU

DELEGATION OF AUTHORITY TO ACT ON PETITIONS OR REQUESTS FOR WAIVER OF RULES IN CONFLICT WITH AN APPLICATION

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 27th day of January 1954;

The Commission having released an order on July 23, 1953, delegating authority to the Chief, Safety and Special Radio Services Bureau, to act on petitions for a waiver of or exception to the Commission's rules, and on January 7, 1954, having released an order delegating similar authority to the Chief, Common Carrier Bureau;

It appearing, that since the kind of action contemplated to be taken under

the two above-mentioned orders is the same it is desirable that the differences between them be eliminated:

It is ordered, That the order released July 23, 1953 delegating authority to the Chief, Safety and Special Radio Services Bureau is rescinded and in lieu thereof, under the authority contained in section 5 (d) (1) of the Communications Act of 1934, as amended, effective immediately, authority is delegated to the Chief, Safety and Special Radio Services Bureau, to act upon petitions or requests seeking waiver of or exception to any rule, regulation or requirement relating to the services under his jurisdiction and to act upon petitions or requests relating to the assignment of frequencies to the various safety and special radio services but requiring action under § 2.103 of the rules, when he finds that the operation for which permission is sought (1) is of a non-recurring nature and does not warrant a rule making proceeding with a view to establishing it on a regular basis, (2) will not exceed 90 days, and (3) will cause no harmful interference to any service operating in accordance with the Table of Frequency Allocations. This delegation shall not apply to requests for renewals of any authority to operate granted hereunder: *Provided, however,* That none of the foregoing limitations shall apply to petitions or requests for waiver of or exception to any requirement set forth in §§ 12.27, 12.44, 12.81, 12.91 and 12.111, the latter section only to the extent that it applies to types of emission, of the Commission's rules governing Amateur Radio Service.

Released: January 28, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-728; Filed, Feb. 2, 1954;
8:52 a. m.]

[Docket No. 10636]

AERONAUTICAL STATIONS SERVING LIGHTER- THAN-AIR CRAFT STATIONS OPERATING ON CERTAIN FREQUENCIES

ORDER MODIFYING LICENSES

In the matter of modification of licenses of aeronautical stations serving lighter-than-air craft stations, now operating on the frequencies 6615 kc. and 11,910 kc.; Docket No. 10636.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 27th day of January 1954;

The Commission, having under consideration its proposal in the above entitled matter which would bring into force certain portions of the International Radio Regulations (Atlantic City, 1947) in accordance with the agreement concluded at the Extraordinary Administrative Radio Conference (Geneva, 1951); and

It appearing, that on August 5, 1953, the Commission, pursuant to section 316 of the Communications Act of 1934, as amended, adopted an order which di-

rected the licensees of aeronautical stations serving lighter-than-air craft on the frequencies 6615 kc. and 11,910 kc. to show cause, on or before September 4, 1953, why their aeronautical land and aeronautical fixed station licenses should not be modified as of October 1, 1953, by having the above-mentioned frequencies deleted therefrom; and

It further appearing, that the frequencies 6615 kc. and 11,910 kc. are not to be replaced with frequencies which may be assigned solely for lighter-than-air operations since the Aeronautical Mobile (R) frequencies are to be available for assignment to lighter-than-air craft and to aeronautical stations serving lighter-than-air craft in the same manner and extent as they will be available for assignment to other aeronautical land and aircraft stations; and

It further appearing, that on August 7, 1953, a copy of the show cause order was sent by regular mail to Aeronautical Radio, Inc., the sole licensee of aeronautical land and aeronautical fixed stations serving lighter-than-air craft stations on the frequencies 6615 kc. and 11,910 kc.; and

It further appearing, that Aeronautical Radio, Inc., filed a timely answer to the show cause order which states that no objection is offered to the deletion of the frequency 11,910 kc. from the licenses of all its aeronautical stations, both land and fixed, serving lighter-than-air craft stations with the exception of eleven aeronautical stations (KQM5, KMA3, KQA6, KQM6, 7/8/9, KQN2/3/4/5) in the Los Angeles, California and Suffield, Ohio, areas; and

It further appearing, that Aeronautical Radio, Inc., states that there is a continuing operational requirement for a 6 megacycle frequency by the eleven aeronautical stations mentioned above in order to provide an adequate communication service to lighter-than-air craft stations and, therefore, objects to the deletion of 6615 kc. from the licenses of those stations as of October 1, 1953, and for an indefinite period thereafter, pending the availability of appropriate Aeronautical Mobile (R) Service, 6 megacycle frequencies, which could provide service to lighter-than-air craft, by shared use as needed, with the general aeronautical mobile services; and

It further appearing, that in view of the continuing operational requirement for a 6 megacycle frequency by the above mentioned aeronautical stations, the request of Aeronautical Radio, Inc., is reasonable;

It is ordered, That, effective March 22, 1954, the licenses of all aeronautical and aeronautical fixed radio stations serving lighter-than-air craft stations be modified by deleting therefrom the frequency 11,910 kc.; and

It is further ordered, That, effective March 22, 1954, the licenses of the following aeronautical enroute and aeronautical fixed stations serving lighter-than-air craft be modified by deleting therefrom the frequency 6615 kc:

Licensee	Call letters	Location
Aeronautical Radio, Inc.	KMCS...	Culver City, Calif.
	KMB9...	Long Beach, Calif.
	KMA22...	Los Angeles, Calif.
	KQE28...	Suffield, Ohio.
	KMA4...	Mobile.
	KMA5...	Do.
	KQA37...	Do.
	KQE29...	Do.
	KQE30...	Do.
	KQE31...	Do.
	KQE32...	Do.
	KQE33...	Do.
	KQE34...	Do.
	KQE35...	Do.
	KQE36...	Do.

And it is further ordered, That, lighter-than-air craft stations and the following aeronautical en route stations serving lighter-than-air craft stations, are hereby authorized to continue operation on the frequency 6615 kc. until replacement frequencies have been made available or until the end of their present license periods, whichever is earlier.

Licensee	Call letters	Location
Aeronautical Radio, Inc.	KMA3...	Los Angeles, Calif.
	KMQ5...	Suffield, Ohio.
	KQA6...	Mobile.
	KQM6...	Do.
	KQM7...	Do.
	KQM8...	Do.
	KQM9...	Do.
	KQN2...	Do.
	KQN3...	Do.
	KQN4...	Do.
	KQN5...	Do.

Released: January 29, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-718; Filed, Feb. 2, 1954;
8:51 a. m.]

[Docket Nos. 10701, 10703]

SANGAMON VALLEY TELEVISION CORP. AND
WMAY-TV, INC.

NOTICE CONTINUING HEARING

In re applications of Sangamon Valley Television Corp., Springfield, Illinois, Docket No. 10701, File No. BPCT-589; WMAV-TV, Inc., Springfield, Illinois, Docket No. 10703, File No. BPCT-1768; for construction permits for new television stations.

Hearing in the above-entitled proceeding is continued by agreement of all the parties from 10:00 a. m., February 1, 1954, to 10:00 a. m., February 8, 1954.

Dated: January 27, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-719; Filed, Feb. 2, 1954;
8:51 a. m.]

[Docket No. 10870]

PALLADIUM PUBLISHING CO.

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Palladium Publishing Company, Benton Harbor, Michigan,

Docket No. 10870, File No. BMPCT-1426; for additional time to complete construction of television broadcast station WHFB-TV.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 27th day of January 1954;

The Commission having under consideration the above-entitled application for additional time in which to complete construction of television broadcast station WHFB-TV at Benton Harbor, Michigan; and

It appearing, that on February 25, 1953, the Commission granted Palladium Publishing Company's application (BPCT-1282) for a construction permit for a television station to operate on Channel 42 in Benton Harbor, Michigan; and

It further appearing, that no construction has taken place nor have any orders been placed for the equipment necessary to begin such construction; and

It further appearing, that the applicant was advised on November 25, 1953, that the Commission was unable to find that the applicant has been diligent in filing applications in compliance with conditions attached to the construction permit, thus foreclosing the commencement of construction at an early date, or in ordering equipment and in constructing the proposed station; and

It further appearing, that the applicant filed a reply to the aforesaid letter of November 25, 1953; and that the Commission, after due consideration of such reply, is still unable to conclude that the applicant has been diligent in ordering equipment or has been prevented from commencing construction by causes not under its control, and cannot determine that a grant of the above-entitled application would serve the public interest;

It is ordered, That the above-entitled application of Palladium Publishing Company is designated for hearing to commence at 10:00 a. m. on the 1st day of March 1954, in Washington, D. C. upon the following issues:

(1) To determine whether Palladium Publishing Company has been diligent in proceeding with the construction authorized in its construction permit (File No. BPCT-1282), granted on February 25, 1953; and

(2) To determine whether it would be in the public interest, convenience and necessity to grant the above-entitled application of Palladium Publishing Company.

Released: January 28, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-720; Filed, Feb. 2, 1954;
8:51 a. m.]

[Docket No. 10871]

J. PATRICK BEACOM & ASSOCIATES

ORDER DESIGNATING APPLICATION FOR
HEARING ON STATED ISSUES

In re applications of J. Patrick Beacom, Timothy P. Beacom and Jen-

nings Randolph d/b as J. Patrick Beacom & Associates, Clarksburg, West Virginia, Docket No. 10871, File No. BPCT-1708; for construction permit for new television station.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 27th day of January 1954;

The Commission having under consideration the above-entitled application, requesting a construction permit for a new television broadcast station to operate on Channel 22 in Clarksburg, West Virginia; and

It appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-named applicant was advised by letter, dated January 6, 1954, among other things, that its application raised questions as to its financial and technical and other qualifications to construct, own and operate a television broadcast station; that, in view of the interests of J. Patrick Beacom in the applicant and in Fairmont Broadcasting Company, permittee of a television station on Channel 35 in Fairmont, West Virginia, a question was raised as to whether a grant of its application would be consistent with the provisions of § 3.636 (a) of the Commission's rules and its policies promulgated thereunder; and that applicant was given an opportunity to reply to said letter; and

It further appearing, that upon due consideration of the above-entitled application, the amendments filed thereto, and the reply to the above letter, the Commission finds that under section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applicant is legally, financially and technically qualified to construct, own and operate a television broadcast station, but that the TV interests of J. Patrick Beacom, as indicated above, raise a question as to whether applicant's proposed operation is consistent with the provisions of § 3.636 (a) of the Commission's rules; that the Commission is unable to determine that a grant of the above-entitled application would be in the public interest; and that accordingly, the application should be designated for hearing; and

It further appearing, that the applicant proposes an antenna location in the vicinity of standard broadcast station WBLK; that the installation of the television antenna as proposed is possible and feasible without adversely affecting the ability of Station WBLK to operate in accordance with the terms of its license; that appropriate proof thereof should be submitted after installation and operation of the said proposed antenna; and that a grant if made, of the application shall be subject to the following condition:

The construction authorized is subject to the condition that such shall not adversely affect the ability of standard broadcast station WBLK to operate in accordance with the terms of its license, particularly with respect to its antenna system, and that sufficient field intensity measurements of station WBLK shall be made before and after such construction to prove that no material effect thereon has resulted.

It is ordered, That pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled application is designated for hearing to commence at 10:00 a. m. on the 26th day of February 1954 in Washington, D. C. upon the following issue: To determine, in light of the interests of J. Patrick Beacom in the applicant and in Fairmont Broadcasting Company, permittee of a television station on Channel 35 in Fairmont, West Virginia, whether a grant of the above-entitled application would be consistent with the provisions of § 3.636 (a) of the Commission's rules and its policies promulgated thereunder and would be in the public interest.

Released: January 28, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-721; Filed, Feb. 2, 1954;
8:51 a. m.]

[Docket Nos. 10872, 10873, 10874]

TEXAS STATE NETWORK, INC., ET AL.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Texas State Network, Inc., Fort Worth, Texas, Docket No. 10872, File No. BPCT-571; W. W. Lechner d/b as Lechner Television Company, Fort Worth, Texas, Docket No. 10873, File No. BPCT-1643; R. O. Shaffer, Sterling C. Holloway, M. J. Neeley, Arch Rowan, F. Kirk Johnson and C. L. Rowan, d/b as Fort Worth Television Company, Fort Worth, Texas, Docket No. 10874, File No. BPCT-1644; for construction permits for new television stations.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 27th day of January 1954;

The Commission having under consideration the above-entitled applications, each requesting a construction permit for a new television broadcast station to operate on Channel 11 in Fort Worth, Texas; and

It appearing, that the above-entitled applications are mutually exclusive in that operation by more than one applicant would result in mutually destructive interference; and

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-named applicants were advised by letters of the fact that their applications were mutually exclusive, of the necessity for a hearing and of all objections to their applications; and were given an opportunity to reply; and

It further appearing, that upon due consideration of the above-entitled applications, the amendments filed thereto, and the replies to the above letters, the Commission finds that under section 309 (b) of the Communications Act of 1934, as amended, a hearing is mandatory; and that each of the above-named applicants is legally, financially and technically qualified to construct, own

and operate a television broadcast station;

It further appearing, that the antenna system and site proposed by Fort Worth Television Company will not constitute a hazard to air navigation, provided that special hazard markers are erected; and that a grant, if made, of its application should be subject to the following conditions:

The outer limits of the hazard area in which the tower will be situated shall be marked by symbols consisting of the letters "HAZ", located so that at least one symbol will be visible from aircraft at any normal angle of approach. The marking symbols shall be located immediately beyond the ground connection of the outer guy wires.

The letters of such symbols shall be installed in a manner to be legible in clear air at an altitude of 3,000 feet at a distance of two miles. The symbols shall consist of uniform block letters having a height of at least 30 feet and a width equal to two-thirds of the height. The width of each stroke shall be approximately one-seventh of the height of the letters. In addition, the letters shall be colored aviation surface orange.

The symbols shall be cleaned and repainted as often as necessary to maintain good visibility. If the strokes of the letters are constructed of wood or metal panels, such construction shall be designed to prevent accumulation of snow.

It is ordered, That pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding to commence at 10:00 a. m. on the 26th day of February 1954 in Washington, D. C. to determine on a comparative basis which of the operations proposed in the above-entitled applications would best serve the public interest, convenience and necessity in the light of the record made with respect to the significant differences among the applications as to:

(1) The background and experience of each of the above-named applicants having a bearing on its ability to own and operate the proposed television station.

(2) The proposals of each of the above-named applicants with respect to the management and operation of the proposed station.

(3) The programming service proposed in each of the above-entitled applications.

It is further ordered, That the issues in the above-entitled proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: January 28, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-722; Filed, Feb. 2, 1954;
8:51 a. m.]

[Docket Nos. 10875, 10876]

COLUMBIA AMUSEMENT CO. AND PADUCAH
NEWSPAPERS, INC.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Columbia Amusement Company, Paducah, Kentucky, Docket No. 10875, File No. BPCT-1170; Paducah Newspapers, Incorporated, Paducah, Kentucky, Docket No. 10876, File No. BPCT-1824; for construction permits for new television stations.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 27th day of January 1954;

The Commission having under consideration the above-entitled applications, each requesting a construction permit for a new television broadcast station to operate on Channel 6 in Paducah, Kentucky; and

It appearing, that the above-entitled applications are mutually exclusive in that operation by more than one applicant would result in mutually destructive interference; and

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-named applicants were advised by letters of the fact that their applications were mutually exclusive, of the necessity for a hearing and of all objections to their applications; and were given an opportunity to reply; and

It further appearing, that upon due consideration of the above-entitled applications, the amendments filed thereto, and the replies to the above letters, the Commission finds that under section 309 (b) of the Communications Act of 1934, as amended, a hearing is mandatory; and that each of the above-named applicants is legally, financially and technically qualified to construct, own and operate a television broadcast station;

It is ordered, That pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding to commence at 10:00 a. m. on the 26th day of February 1954 in Washington, D. C., to determine on a comparative basis which of the operations proposed in the above-entitled applications would better serve the public interest, convenience and necessity in the light of the record made with respect to the significant differences between the applications as to:

(1) The background and experience of each of the above-named applicants having a bearing on its ability to own and operate the proposed television station.

(2) The proposals of each of the above-named applicants with respect to the management and operation of the proposed station.

(3) The programming service proposed in each of the above-entitled applications.

It is further ordered, That the issues in the above-entitled proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding and upon suffi-

cient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: January 29, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-723; Filed, Feb. 2, 1954;
8:52 a. m.]

[Docket Nos. 10877, 10878]

KTAR BROADCASTING CO. AND ARIZONA
TELEVISION CO.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of KTAR Broadcasting Company, Phoenix, Arizona, Docket No. 10877, File No. BPCT-409; Arizona Television Company, Phoenix, Arizona, Docket No. 10878, File No. BPCT-1636; for construction permits for new television stations.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 27th day of January 1954;

The Commission having under consideration the above-entitled applications, each requesting a construction permit for a new television broadcast station to operate on Channel 3 in Phoenix, Arizona; and

It appearing, that the above-entitled applications are mutually exclusive in that operation by more than one applicant would result in mutually destructive interference; and

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-named applicants were advised by letters of the fact that their applications were mutually exclusive, of the necessity for a hearing and of all objections to their applications; and were given an opportunity to reply; and

It further appearing, that upon due consideration of the above-entitled applications, the amendments filed thereto, and the replies to the above letters, the Commission finds that under section 309 (b) of the Communications Act of 1934, as amended, a hearing is mandatory; and that each of the above-named applicants is legally, financially and technically qualified to construct, own and operate a television broadcast station;

It is ordered, That pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding to commence at 10:00 a. m. on the 26th day of February 1954 in Washington, D. C., to determine on a comparative basis which of the operations proposed in the above-entitled applications would better serve the public interest, convenience and necessity in the light of the record made

with respect to the significant differences between the applications as to:

(1) The background and experience of each of the above-named applicants having a bearing on its ability to own and operate the proposed television station.

(2) The proposals of each of the above-named applicants with respect to the management and operation of the proposed station.

(3) The programming service proposed in each of the above-entitled applications.

It is further ordered, That the issues in the above-entitled proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: January 29, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-724; Filed, Feb. 2, 1954;
8:52 a. m.]

[Docket Nos. 10879, 10880]

APPALACHIAN BROADCASTING CORP. AND
TRI-CITIES TELEVISION CORP.

ORDER DESIGNATING APPLICATIONS FOR CON-
SOLIDATED HEARINGS ON STATED ISSUES

In re applications of Appalachian Broadcasting Corporation, Bristol, Virginia, Docket No. 10879, File No. BPCT-850; Tri-Cities Television Corporation, Bristol, Tennessee; Docket No. 10880, File No. BPCT-1250; for construction permits for new television stations.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 27th day of January 1954;

The Commission having under consideration the above-entitled applications, each requesting a construction permit for a new television broadcast station to operate on Channel 5 in Bristol, Virginia—Bristol, Tennessee;

It appearing, that the above-entitled applications are mutually exclusive in that operation by more than one applicant would result in mutually destructive interference; and

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-named applicants were advised by letters of the fact that their applications were mutually exclusive, of the necessity for a hearing and of all objections to their applications; and were given an opportunity to reply; and

It further appearing, that upon due consideration of the above-entitled applications, the amendments filed thereto, and the replies to the above letters, the Commission finds that under section 309 (b) of the Communications Act of 1934, as amended, a hearing is manda-

tory; and that each of the above-named applicants is legally, financially and technically qualified to construct, own and operate a television broadcast station;

It is ordered, That pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding to commence at 10:00 a. m. on the 28th day of February 1954 in Washington, D. C., to determine on a comparative basis which of the operations proposed in the above-entitled applications would better serve the public interest, convenience and necessity in the light of the record made with respect to the significant differences between the applications as to:

(1) The background and experience of each of the above-named applicants having a bearing on its ability to own and operate the proposed television station.

(2) The proposals of each of the above-named applicants with respect to the management and operation of the proposed station.

(3) The programming service proposed in each of the above-entitled applications.

It is further ordered, That the issues in the above-entitled proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: January 29, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-725; Filed, Feb. 2, 1954;
8:52 a. m.]

[Docket Nos. 10884, 10885, 10886]

ABRAHAM KLEIN ET AL.

ORDER DESIGNATING APPLICATIONS FOR CON-
SOLIDATED HEARING ON STATED ISSUES

In re applications of Abraham Klein, Philadelphia, Pennsylvania; Docket No. 10884, File No. 1419-C2-P-53; Samuel N. Kirkland, d/b as Contact, Philadelphia, Pennsylvania; Docket No. 10885, File No. 1572-C2-P-53; Hav-A-Call, Inc., Philadelphia, Pennsylvania; Docket No. 10886, File No. 368-C2-P-54; for construction permits for one-way signaling stations in the Domestic Public Land Mobile Radio Service.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 27th day of January 1954;

The Commission, having under consideration the above-entitled applications for one-way signaling stations in the Domestic Public Land Mobile Radio Service in Philadelphia, Pennsylvania; and

It appearing, that the number of applicants for facilities in this area ex-

ceeds the number of frequencies available; and

It further appearing, that the above-entitled applications request authorizations in the same or overlapping service areas and that a grant of such applications might result in harmful mutual interference; and

It further appearing, that in accordance with § 6.409 of the Commission's rules, each frequency available for assignment in the Domestic Public Land Mobile Radio Service is normally assigned exclusively to a single applicant in any service area, in order to permit the rendition of service on an interference free basis; and

It further appearing, that the Commission has advised each of the above-entitled applicants, by letters dated October 5, 1953, and December 1, 1953, pursuant to the provisions of section 309 (b) of the Communications Act of 1934, as amended, as to the reasons why his application cannot be granted without hearing, and that no replies to such letters have been received;

It is ordered, That, pursuant to the provisions of section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding at the offices of the Commission in Washington, D. C. commencing at 10:00 a. m. on March 1, 1954, upon the following issues:

1. To determine the technical, financial and other qualifications (except legal) of each of the applicants to construct and operate the proposed stations.

2. To determine the areas and populations which may be expected to receive service from the proposed facilities and the need for such service in the areas to be served.

3. To determine whether any mutual interference would result from the operation of the proposed stations, and, if so, whether, in view of the nature of the service proposed, such interference would be undesirable or intolerable.

4. To determine whether mutual harmful interference would result as between the proposed operations of Samuel N. Kirkland, d/b as Contact and Hav-A-Call, Inc., on the one hand, and the operations of Tel-A-Talk, Inc., in Allentown, Pennsylvania, on the other hand.

5. To determine the facts with respect to the proposed facilities, personnel, rates, regulations, practices and services of each applicant for the furnishing of Domestic Public Land Mobile Radio Service.

6. To determine, in the light of the evidence adduced on the foregoing issues, which, if any, of the applications should be granted.

It is further ordered, That Tel-A-Talk, Inc., is made party respondent to this proceeding, with its participation limited to Issue No. 4.

Released: January 28, 1954.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 54-726; Filed, Feb. 2, 1954;
8:52 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

GERTRUD AND KARIN RUDNAL

AMENDMENT TO NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Notice of Intention to Return Vested Property hereinafter described to David Rudnal was published on February 17, 1953 (18 F. R. 946). Subsequent to the publication of the notice, this Office was advised that David Rudnal died intestate and left surviving him his wife, Gertrud Rudnal, nee Vogler and daughter, Karin Rudnal. Consequently, the notice of intention to return vested property, which was published on February 17, 1953 (18 F. R. 946), is amended to read as follows:

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimants, Claim No., Property, and Location

Gertrud Rudnal, nee Vogler, Karin Rudnal, Berlin, Germany, Claim No. 35729; \$502.16 in the Treasury of the United States; one-fourth (1/4) thereof to Gertrud Rudnal, nee Vogler and three-fourths (3/4) thereof to Karin Rudnal.

Executed at Washington, D. C., on January 27, 1954.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 54-696; Filed, Feb. 2, 1954;
8:47 a. m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CITRUS FRUIT INDUSTRY IN FLORIDA

NOTICE OF POSTPONEMENT OF HEARING TO DETERMINE WHETHER INDUSTRY IS OF A SEASONAL NATURE

Notice was published in the FEDERAL REGISTER December 24, 1953 (18 F. R. 8705), of a hearing on a petition for revocation of the seasonal industry determinations under section 7 (b) (3) of the Fair Labor Standards Act which apply to the handling, packing, storing, preparing in their raw or natural state, first processing or canning of perishable or seasonal fresh fruits or vegetables (5 F. R. 3167) and to the dehydration of citrus pulp and waste in the States of Florida and Texas (8 F. R. 3811), to the extent that they apply to citrus fruit operations in Florida.

The hearing was scheduled to take place at the Chamber of Commerce Auditorium, Tampa, Florida, on February 10, 1954.

Many interested parties have requested postponement because they will be unable to attend the hearing on the above

date. Notice is hereby given, therefore, that the above-scheduled hearing will be held on May 11, 1954, at 10:00 a. m., in the Auditorium, Hillsborough County Court House, Tampa, Florida.

Notices of personal appearance should be filed with the Administrator by May 4, 1954.

Signed at Washington, D. C., this 29th day of January 1954.

WM. R. McCOMB,
Administrator,
Wage and Hour Division.

[F. R. Doc. 54-689; Filed, Feb. 2, 1954;
8:45 a. m.]

FEDERAL POWER COMMISSION

[Docket No. E-6542]

EL PASO ELECTRIC CO.

NOTICE OF APPLICATION

JANUARY 26, 1954.

Take notice that on January 25, 1954, an application was filed with the Federal Power Commission, pursuant to section 204 of the Federal Power Act, by El Paso Electric Company (hereinafter called "Applicant"), a corporation organized under the laws of the State of Texas and doing business in the States of Texas and New Mexico, with its principal business office at El Paso, Texas, seeking an order authorizing the issuance of 76,399 shares of Common Stock, without par value, \$5,000,000 principal amount of First Mortgage Bonds -- Percent Series due 1984 and 15,000 shares of \$----- Dividend Preferred Stock, without par value. The Common Stock is proposed to be offered for sale to the Common Stockholders of Applicant on February 25, 1954, or such other date as may be determined by Applicant's Board of Directors. The Bonds will be dated as of March 1, 1954, to be issued in April 1954, to be due on March 1, 1984. The Preferred Stock is to be issued in April 1954 on a date to be determined by Applicant's Board of Directors. The Common Stock is to be offered pro rata to the Common Stockholders of Applicant, pursuant to preemptive rights on the basis of one share for each ten shares held of record. Applicant seeks an exemption from the competitive bidding requirements of the Commission's Rules with respect to the issuance and sale of the Common Stock. Applicant proposes to issue the Bonds and Preferred Stock by competitive bidding, all as more fully appears in the application on file with the Commission.

Any person desiring to be heard, or to make any protest with reference to said application should, on or before the 17th day of February 1954, file with the Federal Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's rules of practice and procedure. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 54-690; Filed, Feb. 2, 1954;
8:46 a. m.]

[Docket No. G-2217]

NORTHERN NATURAL GAS CO.

ORDER APPROVING PROPOSED SETTLEMENT AND REQUIRING TARIFF REVISIONS TO BE FILED AND FIXING DATE FOR FURTHER HEARING

This is a rate proceeding arising from rate increases filed by Northern Natural Gas Company (Northern). The record herein has been certified to us for approval of a proposed settlement, as stated on the record by Commission Staff Counsel in open hearing and agreed to by all parties to the proceeding. Upon consideration of the record, we approve the terms of the proposed settlement, permitting the agreed upon rate increases to become effective subject to the terms and conditions agreed to by the parties, as hereinafter set forth.

On June 26, 1953, Northern filed with the Commission proposed Fourth Revised Sheets Nos. 5, 12, and 13 to its FPC Gas Tariff, First Revised Volume No. 2, and requested that such revised sheets become effective on July 27, 1953. Northern also filed for "information" purposes Fourth Revised Sheet No. 14 to its FPC Gas Tariff, First Revised Volume No. 2, which it proposed to make effective as of August 27, 1953. By said Fourth Revised Sheets Northern proposed to increase its rates and charges for sales of natural gas approximately \$13,485,500 per year, based on estimated sales for the year 1954.

Said Fourth Revised Sheet No. 5 is Northern's proposed Rate Schedule CD-1 for "Town Border Natural Gas Delivery" on a contract demand basis; Fourth Revised Sheet No. 12 is proposed Rate Schedule G-1 for "Town Border Natural Gas Delivery" on other than a contract demand basis; Fourth Revised Sheet No. 13 is proposed Rate Schedule IND-1 for "Large Volume Industrial Sales for Resale;" and Fourth Revised Sheet No. 14 is proposed Rate Schedule IND-2 for "Large Volume Industrial Sales for Use and Not For Resale."

Fourth Revised Sheets Nos. 5, 12, 13, and 14 were filed to supersede Northern's Third Revised Sheets Nos. 5, 12, 13, and 14, which have been in effect since November 27, 1952, by virtue of orders of the United States Court of Appeals for the Eighth Circuit entered December 18, 1952, and September 15, 1953, in State Corporation Commission v. F. P. C., No. 14,704, and Northern Natural Gas Co. v. F. P. C., Nos. 14,706, 14,733, 14,743, staying, subject to the terms and conditions therein stated, this Commission's Opinions Nos. 228 and 228-A and accompanying orders issued June 11, 1952, and September 26, 1952, respectively, and Opinion No. 233 and order issued July 30, 1952.

By order issued July 24, 1953, pursuant to authority contained in section 4 of the Natural Gas Act, the Commission, upon its own motion, among other things, suspended said Fourth Revised Sheets and deferred the use of Fourth Revised Sheets Nos. 5, 12, and 13 until December 27, 1953, and of Fourth Revised Sheet No. 14 until January 27, 1954, unless otherwise ordered by the Commission, and until such further time thereafter

as said Fourth Revised Sheets may be made effective in the manner prescribed by the act.

Pursuant to Commission order, hearings herein were held on October 26, 27, and 28, 1953, at which Northern presented evidence purporting to support its proposed increased rates and charges. Following a recess, the hearings were reconvened on January 18, 1954. Immediately upon such reconvening, pursuant to motion of Staff Counsel and with concurrence of all parties to the proceedings, the hearing was recessed from day to day to permit the parties, including the Staff, to confer respecting the possibility of agreement on or simplification of the issues in the proceeding.¹

On January 21, 1954, final agreement was reached by the parties to the proceeding respecting all matters involved and issues presented in this proceeding, excepting the single issue respecting service zones and differentials in rates in areas served by Northern as presented by petitions for leave to intervene herein filed by Council Bluffs Gas Company and Central Electric & Gas Company. Among items included in the agreement are the rate increases to which Northern is entitled, the rates and schedules to be observed by Northern, and the terms and conditions under which the settlement is acceptable to the parties.

The Commission's Staff computed a net investment rate base of \$226,197,315 for the year 1954, including an allowance of \$1,296,565 for cash working capital computed in recognition of the availability of accruals for Federal taxes on income. Allowing a 6 percent return upon this rate base, the Staff developed a total cost of service of \$91,979,330 for the year ending December 31, 1954. Of this total, \$73,625,545 was allocated by the Staff to jurisdictional sales. This cost of service estimate was presented to all parties to this proceeding in the conference and an agreement was reached that rates which would yield revenues of \$73,083,254 from Northern's sales in interstate commerce for resale, based upon estimated operations for the year 1954, would be fair and reasonable and acceptable to all parties.²

It was agreed that Northern will, as soon as possible, file revised rate schedules to be made effective by Commission order as of 8:00 a. m., December 27, 1953, thereby superseding the proposed Fourth Revised Sheets Nos. 5, 12, 13, and 14, as filed on June 26, 1953; and Northern shall file such other revised tariff sheets as may be necessary to conform its FPC Gas Tariff to the provisions of the order accompanying the aforementioned Opinion No. 228, with particular reference to Appendix A attached thereto and made a part thereof, excepting only the level of rates.

¹ By letter dated December 28, 1953, Staff Counsel had advised each of the parties to this proceeding of the intention to move for a recess of the hearing to permit conferring for this purpose.

² Computed on Northern's and utilities' estimates of total annual sales of 234,588,200 Mcf for the year ending December 26, 1954, and 9,541,453 Mcf of billing demand units, based upon an 80 percent ratchet of contract demand.

The rate levels of Northern to be embodied in the schedules to be filed, as agreed upon by all parties, are as follows:

Type of service	Rate schedule	Demand charge	Commodity charge per Mcf
Contract demand.	CD-1	\$2.21 per month per Mcf of billing demand based on an 80 percent ratchet.	Cents 22.1
Interruptible overrun.	R-1		24.1

These rates would produce an estimated increase of \$6,006,254 in revenues from Northern's jurisdictional sales over the estimated revenues which would be produced under the rates in effect on December 26, 1953.

Northern agreed that the revised rate schedules to be filed pursuant to the agreement and this order to be effective on and after December 27, 1953, shall continue in effect through December 26, 1954, at least, unless prior to December 27, 1954, the price payable by Northern, or its subsidiaries, Permian Basin Pipeline Company (Permian) and Independent Natural Gas Company (Independent), to present suppliers of natural gas shall be increased by proper order of the Corporation Commission of Oklahoma, the State Corporation Commission of Kansas, or other State authority having comparable jurisdiction. In such event it is agreed that Northern may file with the Federal Power Commission in accordance with §154.63 of the Commission's general rules and regulations proposed revised schedules containing increased rates designed solely to provide increased revenues during the test period ending December 26, 1954, sufficient only to off-set the reasonably estimated additional cost of gas purchased during that period and to be effective prior to December 27, 1954. It was also agreed that if a filing is made by Northern pursuant to and in accordance with this part of the agreement, no party to these proceedings will interpose any objection to such filing.

It was further agreed by all parties in the proceedings:

(a) That, in the event that the average effective Federal income tax rate payable is less than 52 percent for the year 1954, which was the rate used for computing this tax in the cost of service agreed upon, Northern will forthwith: (1) File revised schedules covering its Contract Demand (CD-1) and Interruptible Over-Run (R-1) Service, subject to the jurisdiction of the Commission, which revised schedules will reflect the decrease in Federal income taxes computed by reason of a change in the tax rate of 52 percent used in this settlement; and (2) refund to those entitled thereto monies representing the difference between Federal income tax computed at 52 percent on revenues received under the rates specified to be filed pursuant to this settlement, subject to the jurisdiction of the Commission, and the Federal income tax recomputed on such revenues, for the period commencing

December 27, 1953, and ending on the effective date of the revised schedules filed pursuant to this part of the agreement. Such decrease attributable to utility customers shall be apportioned between said two rate schedules and said refunds shall be distributed pro rata among the utility customers according to the revenues contributed by them during the period covered by such refunds.

(b) That the rates to be made effective as of December 27, 1953, pursuant to the agreement have been computed on the basis of the so-called Texas Gathering Tax in the amount of 4½ mills per Mcf of gas purchased by Northern, or its subsidiaries Permian and Independent, in the State of Texas. That, if said tax, which is presently the subject of litigation, is held to be invalid by the final judgment of a court of competent jurisdiction, Northern, upon receipt of any refunds of such tax which have been paid by Northern, or its subsidiaries Permian and Independent, on gas purchased on and after December 27, 1953, and later sold in interstate commerce to Northern's customers for resale, will distribute the amounts refunded in respect to such gas among said customers, without additional cost or liability to Northern. It is agreed that such distribution shall be in proportion to the total volume of gas purchased from Northern during the period from and after December 27, 1953.

That, if such tax be invalidated, then in reference to its sales of natural gas subject to the jurisdiction of the Federal Power Commission, Northern will, within ninety (90) days from the date of such invalidation file a reduction in its Rate Schedules CD-1 and R-1 equal to the saving resulting from such invalidation, subject to such sales, such reduction to be retroactively effective to the date of such invalidation: *Provided, however,* That in the event that prior to December 27, 1954, the Texas Legislature should pass a new Texas Gathering or similar tax, Northern will not be required to make such filing, and, if Northern has made such filing, no party will object to Northern's being permitted to withdraw the reduced filing, or to a new filing offsetting such reduced filing.

(c) That there is included in Northern's agreed over-all cost of service of \$88,584,957 an amount of \$37,826,207 for the cost of gas to be purchased during the twelve-month test period ending December 31, 1954. That in the event subsequent action by this Commission results in refunds to Northern of any portion of monies paid by Northern, or its subsidiaries, to their suppliers of natural gas under the terms of existing contracts, or because of orders of the Corporation Commission of Oklahoma and the State Corporation Commission of Kansas, or other State authority having comparable jurisdiction, such refunds accruing to Northern, or its subsidiaries, related to volumes purchased for resale to utility customers shall be distributed among Northern's utility customers, without additional cost or liability to Northern. It is also agreed that such distribution shall be in pro-

portion to the total volume of gas purchased from Northern during the period from and after December 27, 1953.

It was further agreed by all parties that the proposed settlement, if accepted by the Commission, would dispose of all matters involved and issues presented in this proceeding, excepting the single issue respecting zones of service and differentials in rates between zones; that further hearings herein respecting such issue should be had at the earliest practicable date and the cost of service hereinbefore set forth and agreed upon for the purposes of this settlement shall be used to the extent that cost of service is involved.

Furthermore, it was agreed that the decision of the Commission respecting such issue of service zones and rate differentials, if it requires a change in the revised rate schedules filed pursuant to this agreement, shall not be made effective prior to December 27, 1954, nor result in revenues less than the agreed cost of service. It is also agreed that, if so required by decision of the Commission on further hearings herein, Northern shall incorporate in any revised rate schedules filed to become effective on or after December 27, 1954, the methods and principles found by the Commission, subject to judicial review, to be proper as to zones and rate differentials, with due regard to the recovery of reasonable cost of service.

On December 28, 1953, Northern filed a motion, pursuant to section 4 (e) of the act, to effectuate, as of December 27, 1953, those changes in rates, charges, classifications and services proposed in the aforesaid Fourth Revised Sheets Nos. 5, 12 and 13, or, in lieu thereof, to effectuate as of December 27, 1953, Fourth Revised Sheet No. 5 and Substitute Fourth Revised Sheets Nos. 12 and 13. The two last-mentioned substitute sheets were initially filed with said motion and are proposed to be made effective in accordance with § 154.66 of the Commission's general rules and regulations.

On October 26, 1953, in the course of hearings herein, the participating interveners moved the Commission to dismiss Northern's proposed rate increases. On December 8, 1953, Staff Counsel filed a Motion for an Interim Order Fixing Maximum Rates.

Since the Commission has not acted on any of said motions, the parties hereto have agreed that action thereon is neither required nor desired if the proposed settlement is accepted by the Commission.

The Commission finds:

(1) The proposed settlement of the rate proceedings on the basis heretofore described, subject to the terms and conditions hereinafter ordered, is appropriate and in the public interest in carrying out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter provided and ordered.

(2) In the event that the average effective Federal income tax payable by Northern is less than 52 percent for the year 1954, Northern should forthwith:

(a) File revised schedules covering its Contract Demand (CD-1) and Interruptible Over-Run (R-1) Service, subject to the jurisdiction of the Commission, which revised schedules shall reflect the decrease in Federal income taxes computed by reason of a change in the tax rate of 52 percent used in this settlement; and

(b) Refund to those entitled thereto monies representing the difference between Federal income tax computed at 52 percent on revenues received under the rates hereinafter ordered, subject to the jurisdiction of the Commission, and the Federal income tax recomputed on such revenues, for the period commencing December 27, 1953, and ending on the effective date of the revised schedules filed pursuant to subparagraph (a) above. Such decrease attributable to utility customers shall be equitably apportioned between said two rate schedules and said refunds shall be distributed pro rata among the utility customers according to the revenues contributed by them during the period covered by such refunds.

(3) If the so-called Texas gathering tax is held invalid by the final judgment of a court of competent jurisdiction, Northern, upon receipt of any refunds of such tax which have been paid by Northern, or its subsidiaries, Permian and Independent, on gas purchased on and after December 27, 1953, and later sold in interstate commerce to Northern's customers for resale, should distribute the amounts refunded in respect to such gas among said customers, without additional cost or liability to Northern. Such distribution shall be in proportion to the total volume of gas purchased from Northern during the period from and after December 27, 1953. Further, if such tax be invalidated, Northern should, in reference to its sales of natural gas subject to the jurisdiction of the Commission, within ninety (90) days from the date of such invalidation, file a reduction in its Rate Schedules CD-1 and R-1 equal to the saving resulting from such invalidation, subject to such sales, such reduction to be retroactively effective to the date of such invalidation: *Provided, however*, That in the event that prior to December 27, 1954, the Texas legislature should pass a new Texas Gathering or similar tax, Northern should not be required to make such filing.

(4) In the event subsequent action by this Commission results in refunds to Northern of any portion of monies paid by Northern, or its subsidiaries, to their suppliers of natural gas under the terms of existing contracts, or because of orders of the Corporation Commission of Oklahoma and the State Corporation Commission of Kansas, or other State authority having comparable jurisdiction, such refunds accruing to Northern, or its subsidiaries, related to volumes purchased for resale to utility customers, should be distributed among Northern's utility customers, without additional cost or liability to Northern. Such distribution to be in proportion to the total volume of gas purchased from Northern

during the period from and after December 27, 1953.

(5) It is appropriate and in the public interest in carrying out the provisions of the Natural Gas Act that all the issues in these proceedings, excepting the single issue respecting service zones and differentials in rates in areas served by Northern, be disposed of at this time, and that such remaining issue be and the same is hereby reserved for disposition by further order of the Commission. All parties, including Staff Counsel, have concurred in the waiver and omission of the intermediate decision procedure.

The Commission orders:

(A) Northern shall, within ten (10) days after the date of issuance of this order, file revised rate schedules, in a form satisfactory to the Commission, superseding the aforementioned Fourth Revised Sheets Nos. 5, 12, 13, and 14 to its FPC Gas Tariff, First Revised Volume No. 2, and Northern shall also file such other revised tariff sheets, in a form satisfactory to the Commission, as may be necessary to conform Northern's said FPC Gas Tariff to the provisions and requirements of the order accompanying the aforesaid Opinion No. 228, with particular reference to Appendix A attached thereto and made a part thereof, excepting only the level of rates. Rate Schedule CD-1 for Contract Demand Service to be filed pursuant hereto shall contain a rate consisting of a demand charge of \$2.21 per month per Mcf of billing demand based upon an 80 per cent ratchet of contract demand and a commodity charge of 22.1 cents per Mcf of gas delivered. Rate Schedule R-1 for Interruptible Over-Run Service shall contain a rate of 24.1 cents per Mcf of gas delivered.

(B) The revised tariff sheets to be filed pursuant to paragraph (A) above shall be subject to the conditions described in findings numbered (2) through (4) hereinbefore.

(C) Northern, over the signature of a responsible officer, shall file with the Commission within seven (7) days from the date of the issuance of this order, in writing and under oath, an original and four conformed copies of its acceptance of the terms and conditions of this order.

(D) The record in this proceeding shall remain open for further hearings to be held commencing on March 22, 1954, at 10:00 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., respecting the single remaining issue concerning service zones and differentials in rates in areas served by Northern.

(E) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted against Northern.

Adopted: January 27, 1954.

Issued: January 28, 1954.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 54-691; Filed, Feb. 2, 1954;
8:46 a. m.]

[Docket No. G-2324]

PANHANDLE EASTERN PIPE LINE CO.

ORDER FIXING DATE OF HEARING

This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure. Applicant having requested that its application, filed December 2, 1953, pursuant to section 7 of the Natural Gas Act, to construct and operate certain transmission facilities as described in said application, be heard under the shortened procedure provided by the aforesaid rule for non-contested proceedings, and no request to be heard, protest or petition having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on December 17, 1953 (18 F. R. 8468).

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing be held on February 19, 1954, at 9:45 a. m., e. s. t., in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by the application: *Provided, however*, That the Commission may, after a non-contested hearing, forthwith dispose of the proceedings pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: January 27, 1954.

Issued: January 28, 1954.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.[F. R. Doc. 54-692; Filed, Feb. 2, 1954;
8:46 a. m.]SECURITIES AND EXCHANGE
COMMISSION

[File No. 30-154]

NORTH CONTINENT UTILITIES CORP.

ORDER DECLARING THAT APPLICANT HAS
CEASED TO BE A HOLDING COMPANY

JANUARY 27, 1954.

On February 23, 1950, the Commission, pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935 ("act"), approved a plan of reorganization of North Continent Utilities Corporation ("North Continent"), a registered holding company, which plan was ordered enforced by the United States District Court for the District of Delaware by order dated April 4, 1950.

On December 15, 1953, the Commission approved an application-declaration with respect to the distribution by North Continent of its only remaining assets consisting of cash which included \$533,639 representing the base cash proceeds

from the sale of its only subsidiary, Great Northern Gas Company, Limited, a gas utility.

North Continent having filed an application under section 5 (d) of the act requesting the Commission to declare by order that North Continent has ceased to be a holding company:

The Commission finding that North Continent has ceased to be a holding company and that the registration of North Continent as a holding company shall cease to be in effect:

It is therefore ordered, Pursuant to the provisions of section 5 (d) of the act, that North Continent has ceased to be a holding company and that the registration of North Continent as a holding company shall cease to be in effect.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.[F. R. Doc. 54-687; Filed, Feb. 2, 1954;
8:45 a. m.]

CENTRAL MASSACHUSETTS GAS CO. ET AL.

NOTICE OF FILING REGARDING ISSUE AND
SALE OF PROMISSORY NOTES TO BANK

JANUARY 28, 1954.

In the matter of central Massachusetts Gas Company, Mystic Valley Gas Company, North Shore Gas Company; File No. 70-3177.

Notice is hereby given that Central Massachusetts Gas Company ("Central Mass"), Mystic Valley Gas Company ("Mystic") and North Shore Gas Company ("North Shore"), public utility subsidiaries of New England Electric System, a registered holding company, have filed a joint declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (the "act"). Declarants have designated sections 6 (a) and 7 of the act and Rule U-42 (b) (2) promulgated thereunder as applicable to the proposed transactions, which are summarized as follows:

Under certain bank loan agreements, Central Mass, Mystic and North Shore propose to issue to The National City Bank of New York, from time to time but not later than December 31, 1954, unsecured promissory notes in the respective principal amounts of \$700,000, \$6,500,000 and \$2,200,000. Each of such notes will mature on February 1, 1955, and will bear interest at the rate of 3½ percent per annum. According to the joint declaration, the proceeds derived from the issuance of the proposed notes will be used by Central Mass, Mystic and North Shore for the payment of note indebtedness due March 1, 1954, and outstanding in the respective amounts of \$600,000, \$5,550,000 and \$1,950,000 and for construction and other corporate purposes in the respective amounts of \$100,000, \$950,000 and \$250,000.

At the present time Mystic has pending before the Commission an application-declaration (File No. 70-3172) in which it seeks authority to issue and sell \$5,500,000 principal amount of first mortgage bonds and therein states that the proceeds to be derived from such bond sale will be used to pay off its then

outstanding note indebtedness. The bank loan agreement entered into by Mystic provides that the proceeds from such bonds financing, together with other funds, if necessary, will be used to pay the notes then outstanding whereupon the bank loan agreement will be terminated and Mystic has stipulated that thereafter all borrowing authority approved by this Commission pursuant to its request in this declaration will cease to exist.

The joint declaration states that incidental services in connection with the proposed note issues will be performed at cost by New England Power Service Company, an affiliated service company, such cost being estimated not to exceed \$300 for each borrowing company, or an aggregate of \$900.

The joint declaration further states that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

The borrowing companies request that the Commission's order herein become effective forthwith upon issuance.

Notice is further given that any interested person may, not later than February 15, 1954, at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on such matter, stating the nature of his request, the reason for such request and the issues of fact or law, if any, raised by the said joint declaration which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after that date, said joint declaration, in whole or in part and as filed or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rule U-20 (a) and Rule U-100 thereof.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.[F. R. Doc. 54-685; Filed, Feb. 2, 1954;
8:45 a. m.]

[File No. 812-838]

SCUDDER FUND OF CANADA, LTD.

NOTICE OF APPLICATION BY CANADIAN INVESTMENT COMPANY FOR ORDER PERMITTING ITS REGISTRATION AND SALE OF ITS SECURITIES IN THE UNITED STATES

JANUARY 28, 1954.

Notice is hereby given that Scudder Fund of Canada, Ltd. ("Applicant"), an investment company chartered under The Companies Act of 1934, of Canada, has filed an application, and an amendment thereto, under section 7 (d) of the Investment Company Act of 1940 (the "act") seeking an order of the Commission permitting Applicant to register as an investment company under the act and to make a public offering of its securities in the United States.

Section 7 (d) of the act prohibits a foreign investment company from selling its securities to the public through the mails or any means or instrumentalities of interstate commerce unless the Commission issues a conditional or unconditional order permitting such company to register under the act and to make a public offering of its securities in the United States. To issue such an order the Commission must find that, by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the act against such company and that the issuance of such order is otherwise consistent with the public interest and the protection of investors.

Applicant was organized on June 18, 1953, for the purpose of carrying on business as an investment company, concentrating its investments in securities of issuers substantially engaged in Canadian enterprises. Its authorized capital stock consists of 1,000,000 Common Shares of \$1 par value and 1,000 Deferred Shares of \$1 par value. Common Shares and Deferred Shares have the same rights except that Deferred Shares have no redemption rights. Applicant does not intend to issue its Deferred Shares. Applicant intends to make an initial public offering of its Common Shares to realize at least \$5,000,000. When this amount has been received the Common Shares will become redeemable, pursuant to Applicant's Letters Patent ("Charter"), and Applicant proposes then to operate as a diversified open-end management investment company.

The application contains certain undertakings and agreements which together with the provisions of the Applicant's charter and by-laws are proposed by the Applicant as "special circumstances and arrangements" justifying the entry of the requested order.

Applicant's charter and by-laws contain, in substance and effect, the substantive provisions of the act applicable to closed-end and open-end investment companies. For example, where a provision of the act prohibits action by an investment company, or its directors, officers or employees, the charter or by-laws require that such persons shall refrain from such action; where the prohibition applies to others, the charter or by-laws also state that the company will not permit the prohibited conduct.

Applicant's by-laws also contain, among other things, provisions summarized as follows: (1) That all of its securities and cash, other than cash in an amount not in excess of \$10,000, will be maintained in the sole custody of a bank in the United States, with which bank Applicant will also maintain a copy of its books and records; (2) that at least a majority of Applicant's directors and of its officers will be residents and citizens of the United States; (3) that Applicant will retain an independent public accountant with a permanent office and place of business in the United States; (4) that Applicant's investment adviser will maintain its books and records re-

lating to Applicant in the United States; and (5) that Applicant's principal underwriter will be a resident and citizen of the United States. Applicant also agrees that if it makes a continuous public offering of its shares as an open-end company, its principal underwriter will also be a member of the National Association of Securities Dealers, Inc.

Applicant has undertaken and agreed in its application, among other things, (i) that its charter and by-laws will constitute a contract among Applicant, its shareholders, its officers, its directors and the Commission, and that such instruments will not be amended in material respect without permission of the Commission; (ii) that Applicant's present and future officers, directors, investment advisers, principal underwriters and custodian will enter into agreements to comply with the act, applicant's charter, by-laws, and undertakings contained in the instant application; (iii) that Applicant's agreements shall ensure to the benefit of Applicant's shareholders as parties and beneficiaries; and (iv) that breach of the aforesaid agreements or violation of the act by any of the contracting parties will permit revocation of the requested order and the liquidation and distribution of Applicant's assets.

Other agreements and undertakings contained in the application are designed to facilitate the enforcement of the act by the Commission or Applicant's shareholders in appropriate courts of the United States or Canada. To that end each of the contracting parties who are not citizens and residents of the United States will appoint, irrevocably, an agent within the United States for service of process. To ensure the applicability of the act to purchases and sales of portfolio securities not made on established securities exchanges, Applicant has agreed that its custodian will consummate such transactions only in the United States and that the mails or means of interstate commerce will be employed.

Applicant states that a "heavy preponderance" of its portfolio securities will be traded on the Montreal or Toronto Stock Exchanges rather than the New York Stock Exchange. In view thereof Applicant seeks exemption from section 22 (e) (1) of the act to the extent that it may be permitted to suspend the right of redemption of its shares to periods when the Montreal or Toronto exchanges are closed as well as when the New York Stock Exchange is closed, as provided in section 22 (e) (1).

Applicant also states that The Companies Act of Canada requires that Applicant's auditors be selected by its shareholders and, therefore, seeks exemption from section 32 (a) of the act to the extent that that section requires such selection be made by Applicant's Board of Directors and ratified (rather than made) by its shareholders.

Notice is further given that any interested person may, not later than March 5, 1954, at 5:30 p. m., submit to the Commission in writing any facts bearing upon the desirability of a hearing on the

matter and may request that a hearing be held, such request stating the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after said date, the application may be granted as provided in Rule N-5 of the rules and regulations promulgated under the act.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 54-686; Filed, Feb. 2, 1954;
8:45 a. m.]

INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 28858]

WROUGHT IRON PIPE AND RELATED ARTICLES FROM NEW YORK, N. Y., TO SOUTHWESTERN TERRITORY

APPLICATION FOR RELIEF

JANUARY 29, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to schedule listed below.

Commodities involved: Wrought iron or steel pipe and related articles, carloads.

From: New York, N. Y.

To: Points in southwestern territory.

Grounds for relief: Competition with rail carriers, circuitous routes, to maintain grouping, additional origin.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, ICC No. 3982, suppl. 43.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL]

GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-697; Filed, Feb. 2, 1954;
8:47 a. m.]

[4th Sec. Application 28859]

CAUSTIC SODA FROM OHIO, PENNSYLVANIA,
MICHIGAN, AND NEW YORK TO CINCINNATI,
OHIO

APPLICATION FOR RELIEF

JANUARY 29, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: H. R. Hinsch, Alternate Agent, for carriers parties to schedules listed below.

Commodities involved: Caustic soda (sodium hydroxide) in tank-car loads.

From: Specified points in Ohio, Pennsylvania, Michigan and New York.

To: Cincinnati, Ohio.

Grounds for relief: Competition with rail carriers, circuitous routes, market competition, to maintain grouping.

Schedules filed containing proposed rates: H. R. Hinsch, Alternate Agent, ICC No. 3098, suppl. 212, and other carriers listed in the application.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-698; Filed, Feb. 2, 1954;
8:47 a. m.]

[4th Sec. Application 28860]

CAST IRON PIPE FROM RADFORD, VA., TO
SOUTHERN TERRITORY

APPLICATION FOR RELIEF

JANUARY 29, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for carriers parties to schedule listed below.

Commodities involved: Cast iron pipe and related articles, carloads.

From: Radford, Va.

To: Points in southern territory.

Grounds for relief: Competition with rail carriers, circuitous routes, to maintain grouping, to apply rates constructed on the basis of the short line distance formula.

Schedules filed containing proposed rates: C. A. Spaninger, Agent, ICC No. 1374, suppl. 15.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-699; Filed, Feb. 2, 1954;
8:48 a. m.]

[4th Sec. Application 28861]

CLAY FROM POINTS IN WYOMING TO EAU
CLAIRE, WIS.

APPLICATION FOR RELIEF

JANUARY 29, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: W. J. Prueter, Agent, for carriers parties to schedules listed below.

Commodities involved: Clay, crude or ground, carloads.

From: Bently Spur, Clay Spur, Colloid Spur, Moorcroft, Newcastle, Upton, Rock River and Casper, Wyo.

To: Eau Claire, Wis.

Grounds for relief: Competition with rail carriers, circuitous routes.

Schedules filed containing proposed rates: W. J. Prueter, Agent, ICC No. A-3991, suppl. 18; W. J. Prueter, Agent, ICC No. A-3560, suppl. 233.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-700; Filed, Feb. 2, 1954;
8:48 a. m.]

[4th Sec. Application 28862]

ANHYDROUS AMMONIA FROM MILITARY,
KANS., TO GREEN BAY, WIS.

APPLICATION FOR RELIEF

JANUARY 29, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: W. J. Prueter, Agent, for carriers parties to schedule listed below.

Commodities involved: Anhydrous ammonia, in tank-car loads.

From: Military, Kans.

To: Green Bay, Wis.

Grounds for relief: Competition with rail carriers, circuitous routes.

Schedules filed containing proposed rates: W. J. Prueter, Agent, ICC No. A-3991, suppl. 18.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-701; Filed, Feb. 2, 1954;
8:48 a. m.]

[4th Sec. Application 28863]

CHEESE FROM CULLMAN, ALA., AND CYN-
THIANA, KY., TO SOUTHERN TERRITORY

APPLICATION FOR RELIEF

JANUARY 29, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for carriers parties to schedule listed below.

Commodities involved: Cheese, in carloads.

From Cullman, Ala., and Cynthia, Ky.

To: Points in southern territory.

Grounds for relief: Competition with rail carriers, circuitous routes, to apply rates constructed on the basis of the short line distance formula.

Schedules filed containing proposed rates: C. A. Spaninger, Agent, ICC No. 1413, suppl. 2.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from

the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-702; Filed, Feb. 2, 1954;
8:48 a. m.]

[4th Sec. Application 28864]

FOREIGN WOODS FROM ELIZABETH CITY,
N. C., TO POINTS IN OFFICIAL TERRITORY

APPLICATION FOR RELIEF

JANUARY 29, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for carriers parties to schedule listed below.

Commodities involved: Lumber, logs and fitches of mahogany and philippine woods, built-up woods and veneer, carloads.

From: Elizabeth City, N. C.

To: Points in official territory.

Grounds for relief: Competition with rail carriers, circuitous routes, to maintain grouping, additional origin.

Schedules filed containing proposed rates: C. A. Spaninger, Agent, ICC No. 1214, suppl. 89.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-703; Filed, Feb. 2, 1954;
8:48 a. m.]

[4th Sec. Application 28865]

PHOSPHATE ROCK FROM FLORIDA TO
PRAIRIE DU CHIEN, WISCONSIN

APPLICATION FOR RELIEF

JANUARY 29, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for carriers parties to Atlantic Coast Line Railroad Company tariff ICC No. B-3232 and Seaboard Air Line Railroad Company tariff ICC No. A-8153.

Commodities involved: Phosphate rock (other than ground phosphate rock), carloads.

From: Points in Florida.

To: Prairie Du Chien, Wis.

Grounds for relief: Competition with rail carriers, circuitous routes, to maintain grouping.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-704; Filed, Feb. 2, 1954;
8:48 a. m.]

[4th Sec. Application 28866]

VARIOUS COMMODITIES FROM SOUTHERN
TERRITORY TO SOUTHERN, OFFICIAL,
WESTERN TRUNK-LINE AND SOUTHWEST-
ERN TERRITORIES

APPLICATION FOR RELIEF

JANUARY 29, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for carriers parties to tariffs listed in exhibit "A" of the application, pursuant to fourth section order No. 17220.

Commodities involved: Various commodities, carloads.

From: Points in southern territory.

To: Points in southern, official, western trunk-line and southwestern territories.

Grounds for relief: Competition with rail carriers, circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-705; Filed, Feb. 2, 1954;
8:48 a. m.]

[4th Sec. Application 28867]

ACID FROM KINGS MILL, TEX., TO ILLINOIS,
GEORGIA, LOUISIANA, AND SOUTH
CAROLINA

APPLICATION FOR RELIEF

JANUARY 29, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to schedule listed below.

Commodities involved: Acids, viz: butyric, isobutyric and propionic, in packages, in carloads, and in tank-car loads.

From: Kings Mill, Texas.

To: Cairo and Metropolis, Ill., Kranert, Ga., Michoud, La., and Celriver, S. C.

Grounds for relief: Competition with rail carriers, circuitous routes, to apply rates constructed on the basis of the short line distance formula, additional destinations.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, ICC No. 3967, suppl. 305.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon

a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-706; Filed, Feb. 2, 1954;
8:48 a. m.]

[4th Sec. Application 28868]

TILE FROM CHARLESTON, W. VA., TO
AUGUSTA, GA.

APPLICATION FOR RELIEF

JANUARY 29, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for carriers parties to schedule listed below.
Commodities involved: Tile, carloads.
From: Charleston, W. Va.
To: Augusta, Ga.

Grounds for relief: Competition with rail carriers, circuitous routes.

Schedules filed containing proposed rates: C. A. Spaninger, Agent, ICC No. 1127, suppl. 36.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-707; Filed, Feb. 2, 1954;
8:48 a. m.]

[4th Sec. Application 28869]

NEWSPRINT PAPER FROM COOSA PINES AND
CHILDERSBURG, ALA., TO KANSAS CITY,
MO.-KANS.

APPLICATION FOR RELIEF

JANUARY 29, 1954.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-

haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: The St. Louis-San Francisco Railway Company for itself and on behalf of the Central of Georgia Railway Company.

Commodities involved: Newsprint paper, carloads.

From: Coosa Pines and Childersburg, Ala.

To: Kansas City, Mo.-Kans.

Grounds for relief: Competition with rail carriers, market competition, operation through higher-rated territory.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-708; Filed, Feb. 2, 1954;
8:48 a. m.]

[No. 31321]

COAL, LUMBER, AND SCRAP IRON

ALABAMA INTRASTATE RATES AND CHARGES

At a session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 25th day of January A. D. 1954.

It appearing, that an amended petition, dated November 3, 1953, has been filed on behalf of the respondents in the above-entitled proceeding averring that by order of the Public Service Commission of Alabama dated August 24, 1953, in a proceeding entitled Docket 13389, in re: Proposed changes in Alabama intrastate freight rates on scrap iron, carloads, said respondents are required to maintain intrastate rates on scrap iron which are lower than the interstate level and that such rates cause and will continue to cause undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Alabama, on the one hand, and interstate commerce, on the other hand, and undue, unreasonable, and unjust discrimination against interstate commerce;

It further appearing, that the said amended petition brings in issue freight rates and charges made or imposed by authority of the State of Alabama.

And it further appearing, that in the said amended petition respondents pray for modification and clarification of the original order in this proceeding to the extent necessary to permit consideration of the order of the Public Service Commission of Alabama dated February 27, 1953, in its Docket 12865, Alabama Coal Agency, Incorporated v. Alabama Great Southern Railroad Company et al., in determining whether rates for the intrastate transportation of coal between points in Alabama cause undue prejudice and preference and unjust discrimination under the first ordering paragraph of the original order herein;

It is ordered, That in response to the said amended petition the hearing provided in the first ordering paragraph of the original order herein shall be for the additional purpose of receiving evidence from the respondents and any other persons interested, to determine whether the rates and charges of said respondents, or any of them, for the intrastate transportation of scrap iron between points in Alabama cause, or may cause, any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate commerce; and to determine what rates and charges, if any, or what maximum, or minimum, or maximum and minimum rates and charges, shall be prescribed to remove the unlawful advantage, preference, prejudice, or discrimination, if any, that may be found to exist;

It is further ordered, That nothing in the original order shall be interpreted as barring consideration of any order or decision of the Public Service Commission of Alabama which requires respondents to maintain the intrastate rates involved in this proceeding.

It is further ordered, That a copy of this order be served upon each of the respondents, and that the State of Alabama be notified of the action herein taken by sending copies of this order by registered mail to the Governor of said State and to the Public Service Commission of Alabama;

And it is further ordered, That a copy of this order be deposited in the office of the Secretary of the Commission at Washington, D. C., and a copy filed with the Director, Division of the Federal Register, Washington, D. C.

By the Commission, Division 1.

[SEAL] GEORGE W. LAIRD,
Secretary.

[F. R. Doc. 54-709; Filed, Feb. 2, 1954;
8:48 a. m.]